United Nations S/2003/773

Security Council

Distr.: General
30 July 2003

Original: English

Letter dated 16 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 23 April 2003 (S/2003/459).

The Counter-Terrorism Committee has received the attached third report from Colombia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-45108 (E) 180803 190803

Annex

Note verbale dated 11 July 2003 from the Permanent Mission of Colombia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

The Permanent Mission of Colombia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and has the honour to refer to his note of 11 April 2003.

In this connection, the Permanent Mission of Colombia to the United Nations is pleased to transmit to the Committee an additional report (see appendix), with attachments, as requested in that note.

Appendix

Additional report to the report submitted by Colombia on 16 September 2002 to the Counter-Terrorism Committee

1. Implementation measures

1.2. ... The supplementary report indicates that the Government of Colombia is ready to submit whatever draft legislation is needed to bring Colombian legislation into line with the requirements of the Convention for the Suppression of the Financing of Terrorism and other international instruments, a question that it has already begun to study. Please therefore provide a progress report on that review and a detailed outline of any proposed amendments to the Penal Code in this regard.

(a) Adoption of the International Convention for the Suppression of the Financing of Terrorism

To fulfil the commitments made to the international community to prevent and suppress terrorism, particularly with regard to the financial aspect, the Congress of the Republic adopted the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, by means of Act No. 808 of 27 May 2003. In conformity with Colombia's constitutional system, the Act was approved by the President of the Republic and later sent to the Constitutional Court, where its enforceability is currently being evaluated. Once this process is complete, the national Government will deposit the instrument of ratification with the Secretary-General of the United Nations.

Article 2 of the Convention contains the following provision:

"Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

(...)

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article."

According to article 2, paragraph 1 (a), the punishable acts defined in the treaties listed in the annex constitute offences within the meaning of the Convention.

(b) Domestic norms

Article 345 of the current Penal Code (Act No. 599 of 2000) defines the offence of "Management of resources linked to terrorist activities":

"Article 345. Management of resources linked to terrorist activities. Any person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between six (6) and twelve (12) years and a fine of between two hundred (200) and ten thousand (10,000) times the minimum statutory monthly wage."

Article 340 of the Penal Code provides as follows:

"Conspiracy to commit an offence. When a number of persons conspire for the purpose of committing offences, each of them shall, for that act alone, be liable to a term of imprisonment of between three (3) and six (6) years.

When the conspiracy involves the commission of the crimes of genocide, enforced disappearance, torture, forcible displacement, homicide, **terrorism**, trafficking in toxic or narcotic drugs and psychotropic substances, kidnapping, extortive kidnapping, extortion, unlawful enrichment, **money laundering** or fronting and related crimes, or the organization, promotion or **financing of illegal armed groups**, the penalty shall be a term of imprisonment of between six (6) and twelve (12) years and a fine of between two thousand (2,000) and twenty thousand (20,000) times the minimum statutory monthly wage.

The penalty of deprivation of liberty shall be increased by one half for any person who organizes, encourages, promotes, directs, heads, establishes or **finances** a conspiracy for the purpose of committing an offence." (our bold)

Furthermore, in December 2002 the Congress of the Republic adopted Act No. 793 derogating from Act No. 333 of 1996 and establishing rules governing termination of ownership rights, under which, by means of a simple procedure, ownership of assets used in or derived from the commission of punishable acts may be terminated in favour of the State (attachment 1).

Because Colombia is aware of the magnitude of the terrorist phenomenon and the need to take all kinds of effective measures to eradicate it, it continues to implement the juridical and legal instruments required to that end. Progress made in that regard will be reported to the Committee in due course.

1.3. Subparagraph 1 (c) of the resolution requires, inter alia, that States freeze without delay the funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The first and supplementary reports indicate that any restriction of any right of ownership must be effected by court order and the supplementary report states that "freezing" by definition implies a restriction on the right of ownership. Please describe, in particular, the procedure for freezing funds, financial assets, etc., even if the funds are of a legal origin, of persons or entities suspected of terrorist activities as distinct from freezing funds, financial assets, etc. of persons suspected of engaging in money-laundering activities.

The following are considered juridical instruments permitting compliance with the request to freeze financial assets intended for terrorist activities:

Criminal confiscation as defined in article 100 of the Penal Code and regulated by article 67 of Act No. 599 of 2000 (Code of Criminal Procedure):

> "Article 67. Criminal confiscation. The instruments and assets used to commit the punishable act, or which are derived from the commission of such act and are not freely tradable, shall be appropriated by the Office of the Prosecutor-General or an entity designated by that Office, unless the law provides for their destruction or different disposition.
>
> A similar measure shall be applied to intentional offences, when the assets that are freely tradable and belong to the criminally liable person **are used to commit a punishable act**, or are derived from the commission of such act." (our bold)

With regard to this procedure, the provision complies with the recommendation that it be effected by court order, after first imposing a precautionary measure such as seizure or impoundment. However, this legal instrument is subject to serious constraints, depending on the stage reached in the proceedings, namely, with respect to the appropriation of property or assets in the prior stage of criminal investigation. This situation is remedied by the following juridical instrument, which achieves the goal of termination of ownership sought by international recommendations:

Action for termination of ownership rights: precautionary measures provided for in article 12 of Act No. 793 of 27 December 2002:

> "Article 12. Initial stage. The prosecutor competent to hear the action for termination of ownership rights shall begin the investigation, of his own initiative or based on information provided to him under article 5 of this Act, in order to identify the assets in respect of which such action could be initiated, according to the grounds established in article 2.
>
> During this stage, the prosecutor may order precautionary measures or request the competent judge to adopt these measures, as appropriate. Such measures shall comprise suspension of the power to dispose of such assets, impoundment and seizure of assets, of money deposited with the financial

system, of securities, and of the earnings thereon, and the order not to pay them when they cannot be physically impounded. In any event, the National Narcotics Directorate shall be the impounder or depositary of the seized or intercepted assets."

This constitutionally based action is intended to track down assets whose origin or intended use is illicit, and it applies to property, not persons. Act No. 793 of 2002 introduced the possibility of appropriating property or assets in the initial stage of this special procedure, thereby avoiding the constraints of the criminal procedure. This novel approach was motivated by the need to appropriate property or assets intended for terrorist activities, in keeping with the international requirements noted in the Committee's communication.

This type of appropriation is characterized by the following:

- It is effected by court order (decision of a delegated prosecutor);
- It is an interim measure, prior to the start of adversarial proceedings;
- It envisages the application of legal and material precautionary measures that are different from and far broader than those in a criminal procedure, such as suspension of the power to dispose of assets and seizure and impoundment of the property or assets that are the object of the procedure for termination of ownership;
- It is effected on the basis of specific grounds related to the origin of the assets or their intended use for certain illicit activities. Terrorism is not included among these grounds, since it is an offence against public safety (article 2, paragraph 2 (3) of Act No. 793 of 2002);
- Being an action *in rem*, it is effected independently of the criminal liability of those with ownership rights over the assets to which the procedure applies;
- It is always initiated by the Office of the Prosecutor-General of the Nation, either of its own initiative or based on a report submitted by any individual or legal entity, whether public or private, national or international.

1.4. The supplementary report mentions that "although Colombian legislation has no special legislation for freezing funds or financial assets of persons or entities suspected of supporting terrorist activities, any assets linked to criminal activities, including terrorism, are subject to confiscation in the context of a criminal procedure, as provided in article 67 of the Code of Criminal Procedure". Please explain whether the provisions referred to in relation to subparagraph 1 (c) are applicable in the following situations, even if the funds are of a legal origin: funds held in Colombia that are suspected of being linked to terrorism but have not (yet) actually been used for the commission of a terrorist act; funds held in Colombia that are requested to be frozen by a State that considers the funds to have links to terrorism; or funds held in the name of persons and entities identified in lists, such as those approved for the purposes of Security Council resolution 1267 (1999), as being linked to terrorist activities.

Concerning the hypothetical situations outlined above, we can state the following:

(a) With respect to funds held in Colombia that are suspected of being linked to terrorists but have not yet actually been used for the commission of terrorist acts, the following comments can be made:

The use of the criminal confiscation procedure envisaged in article 67 of the Code of Criminal Procedure is, in our view, subject to the declaration of criminal liability of the owner of the assets. Substantial evidence as to the potential use of assets or resources in terrorist activities is required here and mere suspicion is not enough.

Nevertheless, it should be pointed out that this hypothetical situation is envisaged in the third ground for termination of ownership rights (Act No. 793 of 2002), which provides for that legal consequence when: "The assets in question have been used as a means or instrument for the commission of unlawful activities, **are intended for such activities** or are the object of the offence".

However, it should be noted that while the Act does not stipulate substantial evidentiary requirements for the imposition of a measure to secure such assets, since it suffices that there be evidence pointing to, or reason to believe in, the existence of the ground that is invoked, the same is not true of the evidentiary requirements for issuing a ruling of termination of ownership rights, in which the existence of the invoked ground must be proved by conventional evidentiary means, since the Act provides for the weighing of evidence as a precondition for the declaration of termination of ownership rights.

The fact that the assets or resources belonging to the alleged terrorists have not yet been used for terrorist activities also raises a problem of evidence that must be considered on a case-by-case basis rather than from the general standpoint of the above-mentioned legal instruments. Otherwise, even in the best of cases, that would amount to a presumption of bad faith and would be contrary to our legal and constitutional system.

(b) The hypothetical situation of funds held in Colombia that are requested to be frozen by a State that considers the funds to have links to terrorism does not present any problem, since there is an express norm authorizing judicial cooperation, either through criminal confiscation as provided in article 507 of the Code of Criminal Procedure (Act No. 600 of 2000) or through termination of ownership rights as provided in article 21 of Act No. 793 of 2002.

Code of Criminal Procedure (Act No. 600 of 2000):

"Article 507. Measures requested by a foreign authority with respect to assets. Termination of ownership rights or any other measure involving loss or suspension of the power to dispose of assets may be effected in Colombia by order of the competent foreign authority.

The decision ordering termination of ownership rights, confiscation or any definitive measure shall be communicated to the Office of the Prosecutor-General of the Nation. The Office shall decide, by interlocutory decision, whether there are grounds for the requested measure. If so, it will send the decision to the competent judge for him to issue a judicial ruling.

The Prosecutor-General may set up an international judicial assistance fund in which to deposit those resources.

In no case may the powers granted by Colombian law to persons affected by the decision to terminate ownership rights be impaired."

Action for termination of ownership rights, Act No. 793 of 2002:

"Article 21. Cooperation. Judicial cooperation agreements and treaties signed, adopted and duly ratified by Colombia shall be fully applicable for obtaining cooperation with respect to the appropriation of assets when their content is compatible with the action for termination of ownership rights".

The foregoing is without prejudice to existing diplomatic channels or the provisions of the different bilateral, regional or multilateral agreements, treaties or conventions on this issue signed and ratified by Colombia.

(c) With respect to the appropriation of funds held in the names of persons or entities identified in lists, such as those approved for the purposes of Security Council resolution 1267 (1999), as being linked to terrorist activities, the following comments are in order:

Colombia's legal system imposes clear, specific preconditions for the waiver by the State of constitutional and legal protection for assets connected with criminal activities and thus for the adoption of measures of confiscation or termination of ownership rights.

Those procedural or causal preconditions are related to the illicit origin or intended use of such assets and are confirmed by articles 34 and 58 of the Constitution.

Therefore, our legislation does not accept limitations on the right of ownership based on the identification of the owner of the assets as a terrorist in a list, since that would involve applying a measure of forfeiture of assets, a penalty prohibited in Colombia under article 34 of the Constitution.

Moreover, the penal or judicial scope of "blacklists" in our legislation is limited by the constitutional principles set forth in articles 15 and 29 of the Constitution (*habeas data* and due process), observance of which is mandatory since they govern all kinds of judicial and administrative action.

In any case, appropriating assets simply because their owners appear on a certain list contravenes our domestic legal order, unless their inclusion on such list is accompanied by objective information pointing to the illicit origin or intended use of the assets.

1.5. Both the initial report and the supplementary report indicate that Colombia has some legislation dealing with the requirement of subparagraph 1 (d) of the resolution. The supplementary report mentions Colombia's need to receive feedback from countries that have developed mechanisms to monitor funds received by associations and by non-governmental and non-profit organizations, with a view to ensuring that funds are not diverted to terrorist activities. The CTC would, accordingly, be grateful to know what legal and institutional mechanisms are in place in Colombia to monitor and audit the collection and use of funds by associations and other organizations. Please furnish a progress report on the steps taken by Colombia to incorporate the full requirements of subparagraph 1 (d) into its domestic law.

The Information and Financial Analysis Unit (UIAF),[1] through its information systems, monitored the foreign exchange, cash and notarial transactions carried out in 2002 by non-profit and non-governmental organizations, with a view to identifying behaviour suggesting the existence of money-laundering. A database was also set up in the Unit enabling it to keep a record of non-profit and non-governmental organizations registered with the Chambers of Commerce[2] of the country's main cities.

1.6. Effective implementation of paragraph 1 of the resolution requires that financial institutions and other intermediaries (for example, lawyers, notaries and accountants, when engaged in brokering activities, as distinct from the provision of professional advice) should be under a legal obligation to report suspicious transactions. From the supplementary report, it appears that only entities under the supervision of the Superintendence of Banks and notaries (when performing an activity as a public service) are under an obligation to report suspicious transactions. The CTC would welcome a list of the classes of persons and entities required by current legislation to report suspicious transactions and would like to be informed about the penalties for non-compliance with requirements to report suspicious transactions. Please outline the relevant legal provisions.

Sector	*Legislation*
Customs brokers Aimed at public and private warehouses, customs brokerage companies, harbour companies, user-operators and industrial and commercial users of free zones, shipping companies, international cargo agents, postal traffic and urgent consignment brokers, messenger companies, permanent customs users, export-oriented users, other ancillary customs operators and foreign currency exchange professionals.	**Circular No. 170 of 2002** by which the Directorate of National Taxes and Customs (DIAN) establishes norms for the "Prevention and control of money-laundering" and reporting of suspicious operations.

[1] The Information and Financial Analysis Unit was established by Act. No. 526 of 12 August 1999 as a special government technical unit attached to the Ministry of Finance and Public Credit, with legal personality, administrative autonomy, independent capital assets and special regimes in the areas of personnel administration, nomenclature, classification, wages and benefits, whose functions would be to act on behalf of the State to detect practices associated with money-laundering.

[2] Chambers of Commerce are private business associations, although they are set up by the Government of its own initiative or at the request of businesses in the place where they are to operate (article 78C of the Commercial Code). In addition to performing functions related to their activities as business associations, they perform the public function of maintaining a business register and certifying the documents included in it (articles 123 and 365 of the Penal Code and 86 of the Commercial Code). Article 22 of Act. No. 80 of 1993 gave Chambers of Commerce an additional public function: the registration of bidders, a precondition for individuals or legal entities wishing to conclude contracts with State entities for building work, consultancy, supplies and sales of movable property to be able to take part in bidding and selection processes.

Sector	*Legislation*
Financial institutions Aimed at banking establishments, financial corporations, savings and housing corporations, commercial financing companies, trust companies, general storage warehouses, livestock funds, higher-level cooperative organizations, reinsurance companies, capital endowment companies, insurance brokers, general insurance companies, life insurance companies, insurance cooperatives, offices representing foreign financial agencies in Colombia, special official institutions, pension and unemployment fund administrators, unified average premium regime administrators, offices representing foreign reinsurers in Colombia, full-fledged foreign exchange companies, Bank of the Republic, cooperatives (transferred by Dancoop), financial cooperatives.	**External circular No. 046 of 2002** by which the Superintendence of Banks establishes rules on the "Prevention and control of money-laundering", reporting of suspicious operations and reporting of cash transactions.
Entities of the unified sector (cooperatives). Aimed at multi-asset cooperatives, savings and loan cooperatives and full-range cooperatives with a savings and loan section.	**External circulars Nos. 0014 of 2000 004 of 2001 and 007 of 2003** by which the Superintendence of the Unified Economy establishes rules on the "Prevention and control of money-laundering", reporting of suspicious operations and reporting of cash transactions.
Foreign exchange professionals	**Circular No. 170 of 2002** by which the DIAN establishes norms for the "Prevention and control of money-laundering" and reporting of suspicious operations.
Foreign exchange brokers and stockbrokers authorized by the foreign exchange regime	**Resolutions Nos. 8 of 2000, 3 of 2002 and 1 of 2003** by which the Bank of the Republic establishes that persons residing in the country and persons residing abroad who carry out a foreign exchange operation in Colombia must present a foreign exchange declaration through foreign exchange brokers; in the case of operations carried out through the countervailing mechanism, the declarations must be presented directly to the Bank of the Republic.

Sector	*Legislation*
	Report to the Information and Financial Analysis Unit (UIAF) of the Ministry of Finance, in the manner stipulated by it, any cash operation, in pesos or foreign currency, in excess of US$ 10,000. Also report to the Unit, as stipulated by it, any operation suspected of constituting money-laundering or of involving money whose origin is illicit.
Securities brokers	**Circular No. 4 of 1998** of the Superintendence of Securities on mechanisms for the prevention and control of criminal activities through the securities market.
Notaries	**Decree No. 1957 of 2001, Circulars Nos. 02-01 and 02-07 of 2002, Instructions for the prevention of money-laundering in notarial operations** by which the Superintendence of Notaries and Registries and the UIAF issue instructions for the reporting of suspicious operations and the reporting of notarial transactions.
All sectors	**Decree No. 1497 of 2002** partially regulating Act No. 526 of 1999 and stipulating provisions for the reporting of suspicious operations, reporting deadlines, etc.

In Colombia, failure to comply, in full or in part, with the obligation to report suspicious operations will give rise to the imposition of criminal and administrative penalties by the competent supervisory, oversight and monitoring authorities, both on the entity and on the responsible officials who fail to comply with this legal obligation, without prejudice to the corresponding penal consequences.

In the financial institutions sector, article 107 of Decree No. 663 of 1993 (Organic Statute of the Financial System) stipulates the administrative penalties applicable in the event of non-adoption or non-application of control mechanisms, without prejudice to the corresponding penal consequences. Articles 209 and 211 of the Statute stipulate the monetary penalties for both individuals and institutions that fail to adopt the necessary control measures to prevent money-laundering.

Sector	*Legislation*	*Penalty*
Entities overseen by the Superintendence of Banks Banking establishments, financial corporations, commercial financing companies, trust companies, general storage warehouses, higher-level financial cooperatives, pension and unemployment fund administrators, pension fund administrators, social security funds or entities administering the unified average premium with defined benefits regime, Findeter, insurance companies, insurance cooperatives, reinsurance companies, capital endowment companies, non-profit companies that may assume risks arising from occupational diseases and industrial accidents, insurance and reinsurance brokers and insurance agencies. Bank of the Republic Financial Institutions Guarantee Fund Fund for the Financing of Development Projects (FONADE) Foreign exchange companies	Organic Statute of the Financial System (Decree No. 663 of 1993) Basic legal circular of the Superintendence of Banks	(a) Warning (b) Fine. Up to 117,689,000.00 pesos (2003) for individuals and up to 1,863,765,800.00 pesos for institutions for infringing the norms on prevention of money-laundering. The Superintendence of Banks may also order the fined establishment to pay up to 1,863,765.00 pesos towards the implementation of internal corrective mechanisms. (c) Suspension or revocation for up to five (5) years of authorization to perform functions that require such authorization in entities overseen by the Superintendence of Banks. (d) Dismissal of managers, directors, legal representatives or financial auditors of persons overseen by the Superintendence of Banks. This penalty applies without prejudice to those established by special norms.

In addition, article 325 of the Penal Code (Act No. 599 of 2000) defines the offence of failure to control, establishing that: "Any employee or director of a financial institution or savings and loan cooperative who, with a view to concealing or covering up the illicit origin of the money, fails to comply with the control mechanisms established by the legal system for cash transactions shall, for that offence alone, be liable to a term of imprisonment of between two (2) and six (6) years and a fine of between one hundred (100) and ten thousand (10,000) times the minimum statutory monthly wage".

Moreover, the individuals and entities required to report suspicious activities to the DIAN are: public and private warehouses, customs brokerage companies, harbour companies, user-operators and industrial and commercial users of free zones, shipping companies (not included in the resolution), international cargo agents, postal traffic and urgent consignment brokers, messenger companies, permanent customs users, export-oriented users, other ancillary customs operators and foreign currency exchange professionals.

1.7. The supplementary report mentions that the operation of "informal" banks in Colombian territory is expressly forbidden by financial legislation. The CTC would be grateful for an account of the action taken, or proposed, in

relation to the regulation of alternative money transmission agencies, not only in relation to money laundering but also in relation to other criminal activity, especially terrorism.

Under Colombia's Constitution, financial, stock market, insurance and other activities related to the management, use and investment of public resources are considered to be in the public interest and can be carried out only with the authorization of the State. Therefore, the Superintendence of Banks, as a government technical body, is responsible for giving authorization to engage in financial activities, including those conducted through banks.

This system of prior authorization and comprehensive oversight of the activities of financial entities is designed to ensure confidence in the financial system and that operations are carried out securely, transparently and efficiently.

In keeping with the foregoing, the Organic Statute of the Financial System (Decree No. 663 of 1993) empowers the Superintendence of Banks to impose various precautionary measures if financial activities are carried on without authorization.[3]

With regard to money transfers, we should first mention that article 4 (d) of Act No. 9 of 1991, the framework law governing international exchange operations, characterizes as operations subject to the foreign exchange regime "entries to or departures from Colombia of foreign currency or Colombian legal tender and drafts representing such monies", while article 1 of Decree No. 1735 of 1993 defines as foreign exchange operations "all those included in the categories indicated in article 4 of Act No. 9 of 1991 ...", and especially, inter alia, "all those that involve or may involve payments or transfers of foreign currency between residents and non-residents of the country", as well as "all operations carried out by Colombian residents with foreign residents and involving the use of foreign currencies, such as deposits and other foreign operations in a foreign currency".

It is clear from the foregoing that under Colombian legislation, an international money transfer operation is a foreign exchange operation, an activity carried out by **foreign exchange brokers** as defined in article 58 of External Resolution No. 8 of 2002 of the Board of Governors of the Bank of the Republic, the current Foreign Exchange Statute:

---

[3] Decree No. 663/93. Article 108. Precautionary measures. The Superintendence of Banks is responsible for imposing one or more of the following precautionary measures on individuals or legal entities that carry on without authorization activities restricted exclusively to institutions subject to oversight:

(a) Immediate suspension of such activities, under threat of successive fines up to [...];

(b) Dissolution of the legal entity; or

(c) Rapid, progressive liquidation of the illegal operations, for which the relevant administrative procedures set forth in this Statute for cases of seizure of the assets, holdings and business of financial institutions shall be followed.

Paragraph 1. The Superintendence of Banks shall institute precautionary actions in such cases so as to effectively safeguard in good faith the rights of third parties and shall, under its responsibility, immediately take the necessary measures to inform the public.

Paragraph 2. The Superintendence of Banks may impose the penalties stipulated in articles 209 and 211 on any person that obstructs or prevents administrative action designed to establish that activities restricted solely to entities subject to oversight are being carried on illegally, as well as on persons that provide it with false or inaccurate information.

"Article 58. Authorized brokers. The following entities are foreign exchange brokers: commercial banks, mortgage banks, financial corporations, commercial financing companies, the Financiera Energética Nacional (FEN), the Banco de Comercio Exterior de Colombia S.A. (BANCOLDEX), financial cooperatives, stockbroking companies and foreign exchange companies.

In their capacity as foreign exchange brokers, the above entities shall be subject to the rules and obligations established in this resolution."

The institutions listed are authorized to carry out foreign exchange operations on the terms stipulated in article 59 (1) and (2) of the resolution, and they alone can carry out such operations *professionally*.

Thus, under Colombia's foreign exchange regime, the customary legal means of receiving a foreign currency transfer in the country is through operations carried out by brokers as defined above. Under foreign exchange regulations, those entities channel remittances from abroad to beneficiaries in Colombia and in so doing must implement the controls required for such transactions, including foreign exchange controls (for instance, they must require presentation of the corresponding foreign exchange declaration) and controls designed to prevent criminal activities.

It should be emphasized here that the foreign exchange brokers mentioned above, with the exception of stockbroking companies, are subject to control and oversight by the Superintendence of Banks. They must obtain its prior authorization for carrying on the operations specific to each type of entity, including their foreign exchange brokerage operations, and they are subject to the regime for the prevention of criminal activities laid down in the Organic Statute of the Financial System and to the instructions issued by the Superintendence of Banks in this connection.

This being so, the design and implementation of a comprehensive system for the prevention of money-laundering, the primary obligation of financial institutions and foreign exchange companies which, together, account for the bulk of money transfers to and from the country, is intended to control that risk effectively by preventing the use of such institutions by, inter alia, terrorist organizations.

With a view to preventing entities monitored by it from being used by terrorist networks, the Superintendence of Banks has issued various sets of instructions (see table 1 attached), the most noteworthy being Circular Letter No. 25 of 2002 advising that: "the mechanisms put in place by law by the Colombian financial system to prevent and control criminal activities must be sufficient to successfully detect any suspicious operation that may be linked to the channelling of resources of illicit origin towards the perpetration of terrorist activities or that is intended to conceal assets derived from such activities and to report promptly thereon to the Information and Financial Analysis Unit of the Ministry of Finance and Public Credit (UIAF)".

It should be noted with regard to foreign currency exchange that, according to Circular DCNI 30 of the Board of Governors of the Bank of the Republic, all foreign currency exchange professionals must record, on a form designed specifically for that purpose, information on cash transactions of US$ 500 or more or the equivalent in pesos or other foreign currency. Such information must include the full name and identity document details of the payer and indicate whether he represents a legal entity, in which case the company name and registration number must also be recorded, the amount and currency of the payment, and whether it is in the form of cash or a bank draft. In the latter case, the number and amount of the

draft and the financial entity on which it is drawn must be noted in the "Comments" section. The Foreign Exchange Subdirectorate is responsible for monitoring these users and thereby detecting suspicious operations that might be connected with the financing of terrorism.

1.8. The Committee would be grateful if Colombia could provide an outline of the legal provisions that criminalize the use of Colombian territory to plan, finance, organize and/or facilitate the commission of terrorist acts against another State.

Title XII of the Penal Code (Act No. 599 of 2000), entitled "Crimes against public safety", defines criminal offences related to terrorism, starting with their planning through the offences of conspiracy to commit an offence, detailed above, and training for terrorist activities.

> "Article 341. Training for illicit activities. Any person who organizes, instructs, trains or equips persons in military tactics, techniques or procedures for the purpose of conducting **terrorist activities** or operating death squads, private justice groups or gangs of hired murderers, or who recruits them, shall be liable to a term of imprisonment of between fifteen (15) and twenty (20) years and a fine of between one thousand (1,000) and twenty thousand (20,000) times the minimum statutory monthly wage." (our bold)

> "Article 342. Aggravating circumstance. When the acts described in the preceding articles are committed by active or retired law enforcement officers or members of State security bodies, the penalty shall be increased by between one third and one half."

With regard to the financial aspect of the crime of terrorism, the Penal Code provides for the offence of "management of resources linked to terrorist activities":

> "Article 345. Management of resources linked to terrorist activities. Any person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between six (6) and twelve (12) years and a fine of between two hundred (200) and ten thousand (10,000) times the minimum statutory wage."

Instigation to commit an offence for terrorist purposes is also penalized:

> "Article 348. Instigation to commit an offence. Any person who publicly and directly incites another person or persons to commit a specific offence or type of offence shall be liable to a fine.
>
> If the act is engaged in for the purpose of committing the crimes of genocide, enforced disappearance, extortive kidnapping, torture, forcible displacement or homicide or for terrorist purposes, the penalty shall be a term of imprisonment of between five (5) and ten (10) years and a fine of between five hundred (500) and one thousand (1,000) times the minimum statutory monthly wage."

It is also worth noting, in this respect, that the offence of "compulsion to commit an offence" includes among the aggravating circumstances the objective of inciting persons to become members of terrorist groups.

> "Article 184. Compulsion to commit an offence. Any person who compels another person to commit a punishable act, provided that such act does not

constitute an offence entailing a higher degree of punishment, shall be liable to a term of imprisonment of between one (1) and three (3) years.

Article 185. Aggravating circumstance. The penalty shall be increased by between one third and one half when:

1. The objective of the act is to induce persons to become members of terrorist groups, groups of hired murderers, death squads or private justice groups;

2. The persons who are the objects of the act are minors under eighteen (18) years of age or active or retired law enforcement officers or members of State security bodies."

Mention should also be made of the offence of "illicit use of transmitting or receiving equipment", since this activity may be for terrorist purposes.

"Article 197. Illicit use of transmitting or receiving equipment. Any person who, for illicit purposes, possesses or makes use of wireless or television equipment or any electronic means designed or adapted for transmitting or receiving signals shall, for that act alone, be liable to a term of imprisonment of between one (1) and three (3) years.

The penalty shall be increased by between one third and one half when the act described in the preceding paragraph is carried out for terrorist purposes."

1.9. Please provide a progress report on the ratification by Colombia of the 8 international instruments relating to terrorism which are in the process of being ratified. Please outline the provisions that give effect to those instruments in domestic legislation.

Name of international instrument	*Enacting legislation*	*Date of entry into force*	*Draft legislation*	*Depositary and observations*
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 24 February 1988)	Act No. 764 of 31 July 2002			International Civil Aviation Organization (ICAO) Declared enforceable by the Constitutional Court in judgement C-354/03 of 6 May 2003
International Convention against the Taking of Hostages (New York, 17 December 1979)				United Nations Approved by the Congress of the Republic Awaiting Presidential approval
Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980)	Act No. 728 of 27 December 2001	27 April 2003		International Atomic Energy Agency (IAEA) Instrument of accession deposited on 28 March 2003 with the Director General of IAEA
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988)				International Maritime Organization (IMO) Approved by the Congress of the Republic Awaiting Presidential approval
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988)				IMO Approved by the Congress of the Republic Awaiting Presidential approval
Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)				ICAO Approved by the Congress of the Republic Awaiting Presidential approval
International Convention for the Suppression of Terrorist Bombings (New York,15 December 1997)	Act No. 804 of 1 April 2003			United Nations Currently under constitutional review
International Convention for the Suppression of the Financing of Terrorism	Act No. 808 of 27 May 2003			United Nations Currently under constitutional review

In addition, it should be mentioned that, on 7 May 2003, the national Government submitted to the Congress of the Republic bill No. 206/03 "approving the Inter-American Convention against Terrorism, signed in Bridgetown, Barbados, on 3 June 2002 at the thirty-second session of the General Assembly of the Organization of American States (OAS)".

1.10. Subparagraph 3 (g) of the resolution requires States not to refuse extradition of alleged terrorists on grounds of claims of political motivation. According to article 35 of the Political Constitution of Colombia, as amended by Legislative Act No. 01 of 1997, extradition shall not be granted for political crimes. Please confirm that this exception is not a bar to the extradition of a person for terrorist acts that have political motivation.

Under Colombia's legislative framework, political crimes are typified expressly in Title XVIII, "Crimes against the constitutional and legal regime", of the Penal Code (Act No. 599 of 2000) as "rebellion", "insurrection", "rioting", "conspiracy" and "corruption, unauthorized assumption and unlawful retention of command".

The constitutional amendment in Legislative Act No. 01 of 1997[4] provides for an exception to the application of extradition in the case of "political crimes".

Therefore, for the crime of terrorism, any "political motivation" there may be for the commission of that crime is not a bar to extradition.

2.1. The Counter-Terrorism Committee is eager to facilitate the provision of assistance and advice in connection with the implementation of the resolution. It encourages Colombia to inform the Committee of any areas (other than those set out below) in which assistance or advice might be of benefit in taking forward the implementation of the resolution in Colombia.

There are a number of areas in which personnel training might be of benefit, such as:

- Counter-terrorism investigation techniques
- Techniques for the investigation of the financing of terrorism
- Analysis of information relating to the financing of terrorism.

Training in these techniques would help strengthen investigative capacity in the context of legal proceedings against the financing of terrorist groups.

---

[4] Article 1. Article 35 of the Constitution will read as follows:
"Article 35. Extradition may be requested, granted or offered in accordance with public treaties or, failing that, with the law.
Moreover, the extradition of native-born Colombians shall be granted for offences committed abroad which are considered as such in Colombian criminal legislation. the law shall regulate the matter.
Extradition shall not be granted for political crimes.
Extradition shall not be granted when the offences were committed prior to the promulgation of this norm."

United Nations S/2003/774

Security Council

Distr.: General
30 July 2003

Original: English

Letter dated 29 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 25 April 2003 (S/2003/478).

The Counter-Terrorism Committee has received the attached third report from Venezuela submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-45095 (E) 220803 020903

Annex

Letter dated 25 July 2003 from the Permanent Representative of Venezuela to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

I have the honour to transmit to you, attached hereto, the second report supplementary to the report submitted by the Bolivarian Republic of Venezuela on 26 December 2001, pursuant to Security Council resolution 1373 (2001), containing replies to the comments and questions formulated by the Counter-Terrorism Committee (CTC) in the communication from its former Chairman, dated 2 April 2003.

This report includes the following annexes:

- Draft Special Law against Terrorist Acts
- Draft Act on Counter-Terrorism
- Draft Organic Act against Organized Crime

Mindful of its obligations as a member of the international community, the Bolivarian Republic of Venezuela is pleased to submit this second supplementary report, not solely in fulfilment of the requirements of the Security Council Counter-Terrorism Committee, but also as part of its effective commitment to the campaign against international terrorism.

On behalf of the Bolivarian Republic of Venezuela, I am glad to reaffirm the willingness of the National Government to expand or comment on any aspect of the report, and to provide to you, in addition to the draft laws annexed hereto, any other Venezuelan legal text that the Counter-Terrorism Committee might request.

(*Signed*) Milos **Alcalay**
Ambassador
Permanent Representative

Enclosure

Supplementary report of the Government of Venezuela pursuant to Security Council resolution 1373 (2001)*

1.2. In relation to paragraph 1 (a) of the resolution, the supplementary report states (on page 4) "that financial institutions, registries and public notaries are required to report to the criminal investigation authorities all banking transactions that are unusual or that exceed the amounts indicated". The CTC would be grateful for further information, as follows:

What are the criteria by which transactions are characterized as unusual?

Banks and other financial institutions must submit a Suspicious Activities Report to the National Financial Intelligence Unit, through the anti-money-laundering compliance officer or the responsible official, using form PMSBIF044/0497 (see annex A) and in electronic form, concerning any transaction carried out by a client which is unusual, unconventional, complex, in transit, or structured, and which, on analysis, is presumed to involve funds stemming from an illegal activity, or to have been carried out or attempted for the purpose of concealing or disguising monies or assets that stem from illegal activities or have no reasonable purpose, in violation of an anti-money-laundering law or regulation, or to avoid the requirement to report to the National Financial Intelligence Unit. The above-mentioned financial transactions must include those that may be linked to acts carried out by organized criminal groups and structured groups (as defined in the Act ratifying the United Nations Convention against Transnational Organized Crime) and those that may be linked to terrorism-financing activities.

In addition, when a client seeks to carry out a transaction that indicates or suggests a connection with money-laundering, the employee of the bank or financial institution may refuse to provide the service requested, but must immediately so inform the Unit for the Prevention and Control of Money-Laundering, via internal reporting channels. The Unit shall inform the anti-money-laundering compliance officer, who, in agreement with the Committee against Money-Laundering, will submit a report to the National Financial Intelligence Unit.

The Suspicious Activity Report must be submitted within 30 calendar days from the time when the transaction was initiated; the bank or financial institution does not need to be certain that a criminal activity is occurring or that the resources stem from such an activity. It is solely necessary for the bank or financial institution to deem such activities to be suspicious on the basis of its experience or of any examination it has carried out. The Suspicious Activities Report is not a criminal complaint and does not require the formalities and requirements associated with such a procedure, nor does it entail criminal or civil responsibility on the part of the bank or financial institution and its employees, or for the writer thereof. Clients may not invoke any effective rules of confidentiality or privacy to support a civil suit or criminal complaint against employees or the bank or financial institution concerned for disclosing such information, provided that the report informs the competent authorities of a well-founded suspicion of criminal activity, even if the presumed criminal activity has not been carried out.

* The annexes are on file with the Secretariat and are available for consultation.

The regular and systematic reports that banks and other financial institutions are required to submit are entered into the database of the National Financial Intelligence Unit. Such reports must be transmitted electronically within 15 days after the monthly closing, as follows:

- Deposits or withdrawals by clients into or from current accounts, savings accounts, liquid asset or other funds holding an amount equal to or greater than 4,500,000 bolívares.
- The purchase or sale of foreign currency in an amount equal to or greater than $10,000 or its equivalent in other currencies.
- Transfers equal to or greater than $10,000, or its equivalent in other currencies, originating in the Bolivarian Republic of Venezuela and having a foreign destination.
- Transfers equal to or greater than $3,000, or its equivalent in other currencies, to and from territories or regions that are not cooperating in matters of money-laundering and bank secrecy.
- Transfers equal to or greater than $750, or its equivalent in other currencies, to and from drug-producing territories or regions in the Americas.
- Electronic orders equal to or greater than $2,000, or its equivalent in other currencies.
- Sales of electronic money in foreign currencies using Stored Monetary Value Cards whatever the amount of the transaction.

Is a requirement to report suspicious transactions imposed on financial intermediaries, for example, real estate agents, lawyers and accountants?

Article 219 of the Organic Law on Narcotic Drugs and Psychotropic Substances provides that the national executive branch, through the Ministry of Justice (now the Ministry of the Interior and Justice) and the Division of Registries and Public Notaries, shall keep a computerized register of purchases or sales of real estate, or stock or shares, in order to ensure that such transactions follow normal market practice.

In addition, it shall monitor sale and purchase transactions in cash, purchases carried out by a single natural or legal person, if their repeated nature so warrants, and sales to non-resident foreigners in border areas. The registrars of the branch offices of registries and public notaries shall report such transactions to the Division of Registries and Public Notaries within 10 days from the date of the transaction. To that end they shall provide certified copies of all purchases and sales carried out by their offices. Registrars and notaries that fail to abide by these requirements shall pay a fine equalling from 1,670 to 2,670 days of urban minimum wage, and shall be dismissed from their posts in the case of a second offence.

The draft Organic Law on Organized Crime, which should soon be adopted, provides that — in addition to the financial institutions regulated by, inter alia, the General Law on Banks, the General Law on Insurance and Reinsurance and the Law on the Capital Market — bingo and slot-machine parlours, companies involved in the construction and sale of real estate, travel agencies, companies engaged in buying and selling livestock, automobiles, ships, aircraft, or securities, in providing

loans or in exploiting or marketing gold, metals or precious stones are also required to report any suspicious transactions.

What are the penalties for non-compliance with the requirement to report suspicious financial transactions?

The Organic Law on Narcotic Drugs and Psychotropic Substances imposes administrative sanctions on regulated entities that do not abide by articles 215, 216 and 220, which read as follows:

Article 215. In order to implement the operational plan to prevent the use of the banking and financial system for laundering money and other assets stemming from the commission of crimes prohibited under this Law or activities related thereto, the national executive branch shall establish general rules governing the identification of clients, registries, limitations on bank secrecy, the duty to report, and the protection of employees, institutions and internal programmes, on the basis of the following provisions:

1. Opening or holding an anonymous account or an account under a fictitious name is prohibited. When establishing or attempting to establish business relations or initiating transactions of any kind, such as opening accounts, engaging in fiduciary transactions, arranging to rent safety deposit boxes, or carrying out cash transactions, occasional or regular clients shall, if they are natural persons, be required to show an identification card; if they are legal persons, they shall be required to provide documents from the Business Registry or the Civil Registry and if they are foreigners, they shall be required to show official documents authenticated by the consulates of their countries of origin.

2. The records of such transactions, both national and international, must be kept for five years, so as to comply in a timely, effective manner with any request for information from the competent authorities regarding amount, type of currency, identity of the client, date of the transaction, account history, business correspondence, authorizations and any other information that the competent authorities may deem necessary. These documents must be accessible to the competent authorities in the event of a police or judicial investigation, and the principle of bank secrecy may not be invoked to elude these provisions.

3. All persons and entities subject to this Law, as provided above, must establish mechanisms for monitoring and controlling any complex, unusual or unconventional transaction, whether or not it has an apparent or visible economic purpose, as well as any in-transit transactions and any transaction whose amount so warrants, as determined by the institution or established by the national executive branch.

The purpose and destination of such transactions should be closely scrutinized, and any finding or determination should be noted in writing and made available to the monitoring and control agencies, the auditors of the Office of the Superintendent of Banks, the Ministry of Finance and the Judicial Police authorities.

The Office of the Superintendent of Banks and Other Financial Institutions shall impose fines equalling 3,335 to 5,000 days of urban minimum wage on persons who fail to fulfil the obligations established in these three paragraphs; the relevant procedure shall be initiated in accordance with the Organic Law on Administrative Procedures.

4. When they have a well-founded suspicion or indication that funds used in an operation or business within their purview may stem from an illegal activity in accordance with this Law, all persons and entities subject thereto shall report their suspicions to the competent Judicial Police authorities without delay. The clients, whether natural or legal persons, may not invoke any rules of bank secrecy or any privacy or confidentiality laws in force to support a civil suit or criminal complaint against officials or employees, or the institutions or firms in which they work, for disclosing any secret or any piece of information, provided the latter report a well-founded suspicion of criminal activity to the competent authorities, there being no obligation to provide any legal assessment of the acts, and even if the presumably criminal or irregular activity did not occur.

When bringing civil, commercial or criminal actions, no commitment of a contractual nature related to the confidentiality or secrecy of bank transactions or relations, or any use or practice related to such principles, may be invoked to avoid providing information pursuant to this Law. The employees of the institutions subject to this Law may not inform the client that the information has been reported, refuse to give him banking or financial assistance, suspend relations with him, or close his accounts while the police or judicial procedure is in process, unless the competent Judge has previously so authorized. All persons who fail to abide by this provision shall be considered to have committed the offence set forth in article 37 of this Law.

5. Programmes shall be designed and developed for the prevention of money-laundering, including, at a minimum:

(a) The development of internal policies, procedures and controls, including the designation of compliance officers at management level, and efficient, effective and adequate screening procedures to ensure high standards when hiring employees;

(b) The establishment of ongoing training programmes for officials and employees working in sensitive areas related to the matters regulated by this Law; and

(c) Efficient auditing mechanisms for testing systems and activities.

The Office of the Superintendent of Banks and Other Financial Institutions is responsible for the implementation of these provisions, as well as for enforcement and supervision.

The Ministry of the Interior and Justice shall establish, within the competent general division of the Judicial Police Technical Corps, a confidential data system providing financial and banking entities with effective, efficient and timely access to information — by any means of communication that can be registered — on suspicious or unusual clients, including the records of natural or legal persons with respect to the drug trade and money-laundering.

Banks and other financial institutions that fail to abide by this provision shall pay a fine equalling 1,335 to 1,670 days of urban minimum wage.

Article 216. The national executive branch shall establish supervision and control mechanisms to ensure that cash is not laundered through the banking or financial system by way of any mechanism or procedure, and shall, in particular, adopt measures to prevent the transfer of money or assets by any means to regions or locations where there are no applicable regulations similar to those set out in this

Law, and to return them to the country in secure form by wire transfer, electronic transfer or any other means. To that end, the national executive branch shall ensure that banking and financial institutions fulfil the following provisions:

1. They shall pay special attention to business relations and transactions with natural or legal persons from countries which do no apply banking or business regulations or where such regulations are inadequate; when such transactions have no apparent purpose, they shall be carefully examined and the results shall immediately be provided in writing to the competent authorities to ensure compliance with this Law. The Office of the Superintendent of Banks and Other Financial Institutions shall impose a fine equalling 3,335 to 5,000 days of urban minimum wage for the failure to abide by this provision.

2. They shall ensure that these provisions are applicable in branches and subsidiaries located abroad, when the applicable laws in force abroad do not provide for the enforcement and implementation of control and prevention measures. In such cases, the branches and subsidiaries shall so inform the headquarters of the banking or financial institution, so that computerized systems can be set up to adequately track money flows.

Representatives of other banks and finance companies shall inform their mother institutions, offices and branches that, if they wish to provide such services in Venezuela, they must abide by these provisions. Failure to abide by this provision shall be punished by a fine equalling 3,335 to 5,000 days of urban minimum wage.

The Central Bank of Venezuela shall design and develop a data system for all international currency transfers and bearer negotiable instruments, and make such data available to the Judicial Police authorities or to the competent agencies. Failure to abide by this provision shall entail, for any member of the Central Bank of Venezuela, a fine equalling 3,335 to 6,670 days of urban minimum wage.

Banks and other financial institutions shall be obliged to inform the Central Bank of Venezuela of their daily flow of currencies and bearer negotiable instruments.

The Central Bank of Venezuela shall impose strict security measures on any system it decides to adopt, in order to ensure the proper use of data without in any way hampering the free flow of capital. For failure to abide by this provision, a legal person shall be punished by a fine equalling 3,335 to 5,000 days of urban minimum wage.

The Central Bank of Venezuela shall adopt a decision setting the minimum amount that banks and financial institutions must report to it.

The Office of the Superintendent of Banks and Other Financial Institutions and the Central Bank of Venezuela shall be responsible for the enforcement and implementation of these provisions, shall supervise and monitor their implementation, and shall issue guidelines to assist banks and other financial entities in detecting suspicious patterns of conduct among clients. Both institutions shall provide courses to train and brief the personnel of banks and financial institutions responsible for these matters.

Article 220. In the event that a bank or credit institution fails for a second time to comply with these provisions, the Office of the Superintendent of Banks and Other Financial Institutions shall suspend bank transfers abroad for a period of one

to three months in respect of banks and financial institutions that fail to abide by the provisions of this Chapter, without prejudice to the imposition of any fines that might apply and any civil or criminal responsibility that might affect their workers and employees.

– **The obligation to report, imposed on financial institutions, would appear to involve notifying several different authorities. Is it envisaged that, in future, the National Financial Intelligence Unit (UNIF) would become the sole authority to which reports should be submitted? Is it also envisaged that sole responsibility for the assessment of reports and possible referral for further action to other agencies would be conferred on the National Financial Intelligence Unit?**

The National Financial Intelligence Unit is a national central agency, responsible for requesting and receiving financial data related to the offence of money-laundering and the financing of terrorism, from the entire Venezuelan financial system and for examining and transmitting it to the competent authority, i.e. the Public Prosecutor. Accordingly, the National Financial Intelligence Unit is the competent agency for assessing reports and referring them to other bodies. The duties of the National Financial Intelligence Unit can be summarized as follows:

- To develop norms for the prevention and control of money-laundering and the financing of terrorism.
- To assist, advise and monitor banks and other financial institutions regarding their compliance with the above-mentioned norms.
- To receive and examine the regular and systematic reports that banks and other financial institutions transmit electronically to the Unit.
- To receive and examine reports of suspicious activities provided by banks and financial institutions and refer them to the Public Prosecutor, with a view to assisting judicial investigations in cases where financial evidence is sufficient.
- To act as a liaison between the competent jurisdictional bodies and banks and other financial institutions.
- To request and exchange financial information with financial intelligence units of other countries, as requested, in order to assist in combating money-laundering and terrorism financing.
- To promote and participate in skills, training and exchange programmes with national agencies involved in the prevention of money-laundering and terrorism financing.

– **Does the obligation to report suspicious transactions relate solely to the prevention of money-laundering activities or does it also extend to transactions linked to the financing of terrorism?**

This obligation also extends to transactions linked to the financing of terrorism. To that end, the Office of the Superintendent of Banks and Other Financial Institutions issued the following circulars:

- No. SBIF-UNIF-DPC-0563
- No. SBIF-UNIF-DPC-7961
- No. SBIF-UNIF-DIF-03759

In circular No. SBIF-UNIF-DPC-0563, financial institutions are informed of their obligation to report transactions which they suspect or presume to be related to the laundering of money stemming from activities linked to organized crime, or to involve funds whose purpose is the financing of terrorism. Circular No. SBIF-UNIF-DPC-7961 of 23 September 2002 requires financial institutions under the Office's supervision to report to the National Financial Intelligence Unit any suspicious transaction or activity they suspect to be linked to actions by organized criminal groups or structured groups as defined in the Act endorsing the United Nations Convention against Transnational Organized Crime, published in Official Gazette No. 37,357 of 4 January 2002.

Circular No. SBIF-UNIF-DIF-03759 of 9 April 2003, aimed at universal, commercial and investment banks, currency exchanges, loan agencies, money market funds and savings and loan associations, describes the key characteristics of financial transactions that have been linked with terrorist activities and establishes norms to be enforced by the financial institutions and other enterprises under the supervision of the Office of the Superintendent of Banks and Other Financial Institutions, to recognize and detect techniques and methods used in the financing of terrorism.

1.3. Please outline the legal provisions in force in Venezuela which regulate alternative money transfer agencies or services or, in their absence, could Venezuela outline the steps which it intends taking in order to give effect to this aspect of the resolution in its domestic law.

Article 214 of the Organic Law on Narcotic Drugs and Psychotropic Substances stipulates that the entities governed by the General Law on Insurance and Reinsurance and by the Law on the Capital Market are required to cooperate with the executive branch in controlling and inspecting sums of money or other assets presumed to result directly or indirectly from the offences set forth in the Law, or from activities related thereto.

In view of the foregoing, and in accordance with the provisions of articles 1 and 10 of the Law on Insurance and Reinsurance Agencies and with articles 213, 214 and 215 of the Organic Law on Narcotic Drugs and Psychotropic Substances, the insurance oversight body adopted decision No. 99-2-2-2820 of 7 December 1999, published in Official Gazette No. 5,431 of 7 January 2000, concerning rules applicable to insurance and reinsurance operations on the prevention, control and inspection of money-laundering. The decision stipulates that, when banks and other financial institutions subject to this Law learn of operations or transactions having no apparent legitimate purpose the said transactions must be carefully examined by the Anti-Money-Laundering Unit and an internal report submitted to the chairman of the committee against money-laundering, who will evaluate the results and take a decision thereon. If sufficient evidence is present, it shall immediately be provided in writing to the competent authorities and to the police investigation bodies, with a copy to the Office of the Superintendent of Insurance, by means of a Suspicious Activities Report form. The Office of the Superintendent will then inform the National Financial Intelligence Unit.

Regarding companies regulated by the Law on the Capital Market, in accordance with the provisions of article 9 of the Law and with articles 213, 214 and 215 of the Organic Law on Narcotic Drugs and Psychotropic Substances, the

National Securities Commission adopted decision No. 510-97 of 12 December 1997, published in Official Journal No. 36,411 of 11 March 1998, concerning rules applicable to the Venezuelan capital market on the prevention, control and inspection of money-laundering operations.

It likewise requires banks and other financial institutions to report to the National Securities Commission any unusual or suspicious operations having no apparent legitimate purpose, using the Suspicious Activities Report forms. The National Securities Commission will then transmit the case to the National Financial Intelligence Unit.

1.4. Effective implementation of subparagraph 1 (b) of the resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds should actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No transfer of funds from one country to another takes place;**
- **The funds are lawful in origin.**

The current provisions of the law of Venezuela do not adequately appear to meet the requirements mentioned above. The CTC would welcome receiving particulars of the legal provisions which Venezuela has put in place in order to meet those requirements. In their absence the CTC would be grateful if Venezuela could provide it with an indication of the remedial steps which Venezuela intends taking in that regard.

The Venezuelan legal order currently contains no provisions in this regard; however, the situation will be regulated once the Act on Counter-Terrorism enters into force, as it stipulates that "anyone who by any means, directly or indirectly, provides, administers or collects funds or property with the intention of using them to commit any of the offences set forth in this Act shall be sentenced to a prison term of 15 to 25 years".

1.5. Subparagraph 1 (c) of the resolution requires that States freeze without delay funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The first and supplementary reports refer to a procedure which is available in relation to funds which "are connected with a crime that is being investigated". However, Venezuela would appear to have no domestic legal provision for the freezing of funds, regardless of origin, which are:

- **Held in the names of persons and entities identified in lists, such as those approved for the purpose of Security Council resolution 1267 (1999), as being linked to terrorist activities; or**

- **Suspected of being linked to terrorism, but not yet used for the commission of a terrorist act.**

Please provide particulars of how Venezuela currently meets, or proposes to meet, that requirement.

Article 116 of the Constitution stipulates that property shall not be ordered confiscated except in cases permitted under the Constitution. It sets forth one exception, however. Pursuant to an enforceable judgement, the following may be confiscated: the property of natural or legal persons, whether nationals or foreigners, who are responsible for offences against public property, the property of persons who have illegally enriched themselves under government protection and property resulting from commercial, financial or other activities connected with the trafficking of psychotropic substances and narcotic drugs.

Article 66 of the Organic Law on Narcotic Drugs and Psychotropic Substances provides that movable and immovable property, assets, vehicles, ships or aircraft, apparatus, equipment, instruments and other articles which may have been used in the commission of the crimes described in the Law, including money-laundering, shall in all cases be confiscated and, pursuant to a final judgement of conviction, shall be handed over to the Ministry of Finance, which shall dispose of them. Pending the final court judgement, the confiscated property shall be delivered as a judicial deposit to the safekeeping and custody of persons authorized to that effect, and solely in exceptional cases shall be handed over to the Scientific, Criminal and Forensic Investigation Force attached to the Ministry of the Interior and Justice.

Another legislative instrument authorizing the freezing of funds is the General Act on Banks and Other Financial Institutions, article 235, paragraph 16 of which provides that one of the roles of the Office of the Superintendent of Banks is to require that the competent authorities, in accordance with the relevant constitutional and legal provisions, institute preventive measures for the freezing of an account, investment or financial transaction of any kind.

In addition, the Organic Code of Criminal Procedure stipulates in article 218 (cited in the second report) that in the course of the investigation of a criminal act, the Public Prosecutor's Office, with authorization from the examining magistrate, may order the seizure of documents, certificates, securities and sums of money held in bank accounts or safety deposit boxes or by third parties, when there are reasonable grounds for believing that they are connected with the criminal act that is being investigated.

It is important to note that although Venezuela has legislation for freezing funds of any origin, funds must be frozen in accordance with the system of rights and guarantees enshrined in the Constitution and the agreements and treaties signed and ratified by Venezuela, and such action consequently requires a prior decision or authorization from a judge. This does not preclude the freezing of funds suspected of being used to finance terrorism; although it is true that the Venezuelan legal order does not provide for such an offence, Venezuela has ratified the International Convention for the Suppression of the Financing of Terrorism, which has become part of Venezuelan law. Similarly, the United Nations Convention against Transnational Organized Crime, which Venezuela has also ratified, stipulates that "freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion,

disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.

Article 36 of the draft Act against Organized Crime states that, during the course of an investigation into any of the offences committed in the context of organized crime, the Public Prosecutor's Office shall request the examining magistrate to authorize, as a preventive measure, the freezing or seizure of bank accounts that belong to the organization or individuals under investigation or that have been used to commit the offences, as well as the closure of any warehouse, shop, club, casino or night club.

1.6. **Effective implementation of paragraph 1 of the resolution also requires the establishment of an appropriate monitoring mechanism (involving for example registration and auditing requirements) to ensure that the funds collected by organizations which have or claim to have charitable, social or cultural goals are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism. The supplementary report in relation to subparagraph 1 (d) indicates (at page 7) that "the executive and legislative branches are discussing the adoption of legislation on that subject". The CTC would appreciate receiving a progress report on that point.**

As stated earlier, the entry into force of the Act against Organized Crime will introduce regulations governing the activities of all entities that are not part of the formal financial system, but that also conduct activities of an economic nature.

1.7. **The supplementary report states (at pages 4, 6 and 8) that "the National Assembly is currently debating a draft law against organized crime and a draft special law on terrorist acts, both of which would contain provisions for the suppression of activities connected with the financing of terrorism". The CTC would appreciate receiving a progress report of the enactment and an outline of the proposed draft laws.**

The draft Act against Organized Crime was approved on first reading on 6 September 2002 and then submitted to the Standing Commission on Domestic Policy, Justice, Human Rights and Constitutional Guarantees for the preparation of a report to be used for the second reading. The report has been completed and is currently under discussion by the Commission plenary, with 93 of its 150 articles having been approved.

Concerning anti-terrorism legislation, on 29 November 2002 a bill entitled "Draft special law against Terrorist Acts" was approved on first reading by parliamentarians belonging to the Autonomous Parliamentary Bloc and submitted to the Standing Commission on Domestic Policy, Justice, Human Rights and Constitutional Guarantees for the preparation of a report to be used for the second reading. A proposal entitled "Act on Counter-Terrorism" was also submitted by the executive on 3 April 2003. Both proposals are under examination and a report is being prepared for the second reading by a technical team made up of professionals from the Office of the Vice-President of the Republic, Ministry of the Interior and Justice, Ministry of Foreign Affairs, Office of the Attorney-General and consultants from the Domestic Policy Committee of the National Assembly. This was done in conformity with rule 139 of the rules of procedure of the National Assembly, which stipulates that "once the examination process in respect of a draft law has begun,

should another draft law on the same subject be received, it shall be submitted, on approval, to the relevant committee for incorporation into the examination process".

Below is a brief outline of the above-mentioned draft laws, which are also contained in annexes to this document:

Draft Special Law against Terrorist Acts

The objective of this special law is to prevent and punish terrorist acts, i.e. offences committed with explosives, incendiary substances, weapons or other means intended to cause destruction, death or serious damage to the physical or mental health of an indeterminate number of persons, for the purpose of frightening the population or a specific group of persons, produce reprisals of a social, political or religious nature or obtain a measure or concession on the part of any representative of the public authorities; activities linked to terrorist groups, the manufacture, acquisition, theft, stockpiling or supply of weapons, munitions, explosives, inflammables, asphyxiating or toxic substances as well as any other kind of economic action, assistance or intervention undertaken for the purpose of financing terrorist groups or activities.

The Law also establishes the National Financial Intelligence Unit within the Ministry of Finance, the main function of which will be to implement protection systems and to put an end to financial activities that could be associated with terrorist activities.

It also imposes obligations and penalties on natural and legal persons and members of the financial sector involved in terrorist acts and on persons who cooperate in or finance such acts by laundering money deriving from drug trafficking or any other activity associated with organized crime.

Draft Act on Counter-Terrorism

The purpose of this Act is to characterize and punish any act or omission of a terrorist nature, for the purpose of guaranteeing respect for the constitutional order, peace and public health and of protecting the integrity of democratic institutions. To that end the law defines terrorism as meaning any action causing alarm, anxiety, fear or disturbance of the internal order with a view to endangering the lives or integrity of an indeterminate number of persons, subvert the constitutional order or adversely affect the public property or international relations of the Republic.

The draft Act imposes prison sentences of 10 to 20 years on anyone who provokes or maintains a state of terrorism in the country. It also provides for an aggravated offence when such an act is committed using inflammable, bacteriological or chemical substances or explosives or firearms.

Similarly, it provides that anyone who, by any means, direct or indirect, provides, administers or collects funds or property with the intention of using it to commit the offences set forth in the Law shall be sentenced to 15 to 25 years' imprisonment.

Article 24 of the draft Act states that the competent court may seize, on a preventive basis and without delay, funds, financial assets or movable or immovable property of natural or legal persons concerning whom there is sufficient evidence to presume that they have committed or will attempt to commit terrorist acts.

Finally, as mentioned earlier, a multidisciplinary commission is conducting a detailed analysis of these two draft laws with a view to preparing a single draft that meets both international and domestic requirements. This is because the drafts being submitted may contain some gaps in terms of types of offence, appropriate language and legislative technique, since they were drawn up by Parliament as a matter or urgency, in accordance with article 86, paragraph 3 of the National Public Service Law.

Organic Act against Organized Crime

The Organic Act against Organized Crime is aimed at preventing, investigating, prosecuting and punishing offences associated with organized crime and membership of such organized criminal associations and establishing the offences considered to be characteristic of or specific to such organizations.

In Title II of the Act the following are characterized as offences:

Offences against strategic material resources;

Offences against the socio-economic order;

Offences against the public order;

Offences against the public trust;

Offences against persons and individual freedom;

Offences against the administration of justice;

Offences against the preservation of public and private interests;

Sexual offences and offences against the family;

Offences against the public welfare;

Offences against government finance;

Offences against intellectual and industrial property rights;

Offences against freedom of industry and commerce.

Article 8 deals with terrorism, which carries a penalty of 10 to 15 years' imprisonment, and article 9 provides for aggravating circumstances, which carry a penalty of 18 to 20 years' imprisonment.

For offences associated with organized crime the procedure set forth in the Organic Code of Criminal Procedure will be followed, and provisions not appearing in the Code but contained in the Organic Act against Organized Crime will be applied, such as the principle of expediency in cases involving drug trafficking, weapons, terrorism, corruption and money-laundering. In such cases the competent judge may order the criminal proceedings stopped and order the accused to cooperate effectively with the investigation, provide information essential to avoid the continuation of the offence or the commission of other offences, assist in clarifying the incident being investigated or other related incidents or provide useful information for proving participation in the offence whose prosecution has been suspended.

Another provision set forth in the Act refers to the interception or recording of telephone conversations, in the course of investigation of the offences contained in

the Act. Following a reasoned request from the Public Prosecutor's Office, the examining magistrate may authorize the Office to interrupt, intercept or record telephone conversations and other radio-electric means of communications solely for the purposes of the criminal investigation.

1.8. Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to criminalize the recruitment of terrorists within its territory whether the recruitment is concerned with the carrying out of terrorist activities inside Venezuela or abroad. Neither the first nor the supplementary reports make any reference to any current Venezuelan legislation which would cater for this aspect of the resolution. Please indicate how Venezuela intends fully to meet the requirements of subparagraph 2 (a) in relation to recruitment.

Section V, chapter IV, paragraphs 294, 295 and 296 of the Venezuelan Penal Code, concerning individuals who incite civil war, organize armed groups or threaten the public, provide the following:

Article 294. Any person who has performed any act with the aim of exposing any part of the Republic to devastation or looting shall be sentenced to 18 months to 5 years' imprisonment. If the attempt is successful, even in part, the sentence shall be five to nine years' imprisonment.

Article 295. Anyone who forms an armed group in order to commit a certain punishable act or who occupies a senior position or performs a special function within such a group shall for this sole action be sentenced to one to four years' imprisonment.

Other persons who have participated in the armed group shall be sentenced to one to two years in prison.

The provisions of articles 163 and 290 of the present Code shall apply.

Article 296. Anyone who forms an armed group without legal authorization, even though such group was not established to commit punishable acts, shall be sentenced to three to six months in a penitentiary or political prison.

With respect to planned legislation, article 14 of the draft counter-terrorism law provides that anyone who organizes, instructs, trains or hires armed persons or groups in respect of technical tactics or procedures for carrying out terrorist activities shall be sentenced to 15 to 25 years in prison.

1.9. Effective implementation of subparagraph 2 (d) and (e) of the resolution requires each State to make it a criminal offence for anyone to use its territory for the purpose of committing a terrorist act against another State or its citizens or for the purpose of financing, planning and facilitating terrorist acts against another State or its citizens, whether or not a related terrorist act has been committed or attempted. In addressing subparagraph 2 (e), the supplementary report draws attention (at pages 11 and 12) to the draft Act against Organized Crime and to the draft Special Law against Terrorist Acts, which have both been approved at first reading by the National Assembly. Please provide an outline of the relevant legislative proposals together with a progress report on their enactment.

An outline of the aforementioned draft laws was provided in the response to question 1.7. Information concerning all relevant draft laws currently under review has been attached to the present report.

1.10 Addressing subparagraph 2 (g), the supplementary report states (at page 14) that "there is no law on extradition in Venezuela and in practice extradition is governed solely by bilateral treaties or non-treaty arrangements". The CTC would be grateful if Venezuela could provide it with a list of those countries with which it has concluded bilateral extradition agreements.

Venezuela has signed the following bilateral extradition agreements:

- Venezuela and Belgium: extradition treaty signed at Caracas on 13 March 1884. Entered into force on 5 May 1884.
- Venezuela and Cuba: extradition treaty signed at Havana on 14 July 1910. Published in Official Gazette No. 11,886 of 14 April 1913.
- Venezuela and the United States of America: extradition treaty signed at Caracas on 19 January 1992. Entered into force on 14 April 1923.
- Republic of Venezuela and Republics of Bolivia, Colombia, Ecuador and Peru: signed the Bolivarian Extradition Agreement on 18 July 1911, which essentially provided that extradition may not proceed in the case of political crimes.
- Venezuela and Colombia: convention through exchange of notes interpreting article 9 of the Bolivarian Extradition Agreement. Exchange of notes took place in Caracas on 21 September 1928.
- Venezuela and Italy: treaty on extradition and legal assistance. Signed at Caracas on 23 August 1930. Published in Official Gazette No. 17,672 of 8 March 1932.
- Venezuela and Brazil: extradition treaty signed at Rio de Janeiro on 17 December 1938. Published in Official Gazette No. 20,114 of 21 February 1940.
- Venezuela and Chile: extradition treaty signed at Santiago, Chile, on 2 June 1962. Published in Official Gazette No. 27,790 of 19 July 1965. Entered into force on 27 August 1965.
- Venezuela and Spain: extradition treaty signed at Caracas on 4 January 1989. Published in Official Gazette No. 34,476 of 28 May 1990. Entered into force on 30 September 1990.
- Venezuela and Australia: extradition treaty signed at Caracas on 11 October 1988. Published in Extraordinary Official Gazette No. 4,477 of 14 October 1992. Entered into force on 19 December 1993.

1.11. Please provide a progress report on the ratification and implementation of the universal international instruments relating to terrorism to which Venezuela has yet to become a party. The CTC would also appreciate receiving an account of the penalties prescribed under Venezuelan criminal law in relation to those offences which are required to be established as crimes under the provisions of the universal conventions and protocols to which Venezuela is a party.

Venezuela has signed and ratified the following international instruments relating to terrorism:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. Published in Extraordinary Official Gazette No. 2,975 of 2 July 1982 and ratified on 4 February 1983.
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. Published in Official Gazette No. 32,700 of 7 April 1983 and ratified on 7 July 1983.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971. Published in Official Gazette No. 32,740 of 3 June 1983 and ratified on 21 November 1983.
- International Convention against the Taking of Hostages, adopted at the thirty-fourth session of the United Nations General Assembly in New York on 18 December 1979. Published in Official Gazette No. 34,069 of 10 October 1988. Venezuela acceded to the Convention on 13 December 1988.
- United Nations Convention against Transnational Organized Crime, signed on 14 December 2000 at Palermo, Italy. Approved by the National Assembly and published in Official Gazette No. 37,357 of 4 January 2003. The instrument of ratification was deposited at United Nations Headquarters in April 2002. Also deposited were its two supplementary protocols, the Protocol to Prevent, Punish and Suppress Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air.
- International Convention for the Suppression of Terrorist Bombings, adopted in 1997.Venezuela signed the Convention on 23 September 1988. The National Assembly approved the Act on 11 September 2002. The Act was then forwarded to the Office of the Attorney General of the Republic for approval and subsequent ratification. Published in Official Gazette No. 37,727 of 8 July 2003.
- International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 10 January 2000. Venezuela signed the Convention on 16 November 2001. The National Assembly approved the Act on 11 September 2002. The Act was then forwarded to the Office of the Attorney General of the Republic for approval and subsequent ratification. Published in Official Gazette No. 37,727 of 8 July 2003.

Within the framework of the Organization of American States, Venezuela has signed and ratified the following anti-terrorism instruments:

- Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, signed at the third special session of the Organization of

American States General Assembly, held at Washington, D.C., on 2 February 1971. Published in Official Gazette No. 30,223 of 5 October 1973 and ratified on 11 July 1973.

- Inter-American Treaty of Reciprocal Assistance ("Rio Treaty"), signed in Rio de Janeiro in September 1947 and ratified by Venezuela on 25 August 1948.
- Inter-American Convention against Terrorism, adopted at the Organization of American States General Assembly on 3 June 2002. Venezuela signed the Convention on that date.

The following offences and penalties set forth in the Venezuelan Penal Code deal with terrorist acts, which are required to be criminalized under the universal conventions and protocols to which Venezuela is a party:

Article 294. Anyone who carries out any action intended to expose any part of the Republic to devastation or looting shall be sentenced to 18 months' to five years' imprisonment. If the attempt is successful, even in part, the sentence shall be five to nine years' imprisonment.

Article 295. Anyone who, in order to commit a certain punishable act, forms an armed group or occupies a senior position or special function within such a group shall for this sole action be sentenced to one to four years' imprisonment.

Other persons who have participated in the armed group shall be sentenced to one to two years in prison.

The provisions of articles 163 and 290 of the present Code shall apply.

Article 296. Anyone who forms an armed group without legal authorization, even though such group was not established to commit punishable acts, shall be sentenced to three to six months in a penitentiary or political prison.

Article 297. Anyone who unlawfully imports, manufactures, possesses, bears, supplies or conceals explosive or incendiary devices shall be sentenced to two to five years' imprisonment.

Whoever, with the sole intention of terrorizing the public, creating a disturbance or causing public disorder, fires a weapon or throws explosive or incendiary substances at persons or property shall be sentenced to three to six years' imprisonment, without prejudice to the penalties corresponding to any offence they may have committed in using such weapons.

Article 298. If the explosion or threat occurs on the site of a public meeting and at the time when the meeting is being held, or if it occurs on an occasion when there is danger to the greatest number of people in times of public turmoil, calamity or disaster, the penalty shall be four to eight years' imprisonment.

Article 344. Anyone who sets fire to a building or other construction works, crops not yet harvested or stored or warehouses of combustible materials shall be sentenced to three to six years' imprisonment.

If the fire is set in dwelling places or in public buildings or those intended for public use, for a public utility company or for industrial plants; for the practice of religion; for storing or warehousing industrial or agricultural products, merchandise, raw materials or flammable or explosive materials or materials pertaining to mines,

railways, pits, arsenals or shipyards, the sentence shall be four to eight years in prison.

The same penalty shall be imposed on anyone who through some other means causes serious damage to industrial or commercial buildings or other installations.

Anyone who damages equipment intended for the transmission of electric energy or gas or who causes an interruption in their supply shall be sentenced to two to six years' imprisonment.

Article 345. Anyone who sets fire to farm buildings, crop fields or other plantations shall be sentenced to one to five years' imprisonment.

Article 346. Anyone who sets fire to animal pasture or grasslands without the owner's permission or to grasslands bordering forests which supply people with water, even though they are private, shall be sentenced to 6 to 18 months' imprisonment.

Article 347. The penalty established in article 344 shall be applied, respectively, to anyone who, with the intention of destroying, in whole or in part, the buildings or dwelling places indicated in the said article, prepares or causes the explosion of a mine, petard, bomb or other explosive apparatus or device, as well as to anyone who prepares or sets fire to flammable substances capable of producing a similar effect.

Article 348. Anyone who causes a flood shall be sentenced to three to five years' imprisonment.

Article 349. Anyone who, by damaging floodgates, dikes or other installations intended for the common defence against water flows or for recovery from a public disaster, creates the danger of flooding or of any other disaster shall be sentenced to 6 to 30 months' imprisonment.

If the flood or other public disaster does indeed occur, the penalty prescribed under the previous article shall apply.

Article 350. Anyone who sets fire to a vessel, airship or any other buoyant structure or who causes its destruction, submersion or sinking shall be sentenced to three to five years' imprisonment.

Article 351. If one of the offences set forth in the previous articles has affected military installations, buildings or depots, arsenals, rigs, vessels or airships belonging to the Republic or to one of its states, the sentence shall be four to eight years' imprisonment.

Article 352. Anyone who plans to cause a shipwreck by destroying, disrupting or causing any malfunction in a lighthouse or other signal, or using for that purpose a false signal or other contrivance, shall be sentenced to 6 to 30 months' imprisonment.

If the submersion or shipwreck of any vessel actually occurs, the provisions of the previous articles shall apply, depending on the case.

Article 353. Anyone who, in order to prevent a fire from being extinguished or to impede mechanisms intended to prevent submersion or shipwreck, removes, conceals or renders inoperable the materials, apparatus, rigging or other equipment used for extinguishing or prevention shall be sentenced to 6 to 30 months' imprisonment.

Article 354. The provisions of articles 344, 347, 348, 349, 350 and 351 shall also be applicable to anyone who, in a building or anything else belonging to him, commits one of the actions provided for in those articles and causes the damage referred to in those articles or endangers third parties or outside interests.

The indicated penalty shall increase by one sixth to one third if the act or event has the objective set out in article 466.

Article 355. Whenever the act or event provided for in the previous articles endangers another person's life, the penalties set forth in those articles shall be increased by up to one half.

Article 356. The penalties set forth in those articles shall be reduced to a prison sentence of one to three months if the cases provided for in the aforementioned articles concern an event of little significance and the offence does not endanger anyone's life or expose anything else to danger.

Article 358. Anyone who blocks the route of any means of transportation, opens or closes the communications of such routes, sends false signals or takes any action with the aim of threatening to cause a disaster shall be sentenced to four to eight years' imprisonment.

Anyone who causes an interruption of communications by means of explosives or who by the same means causes a derailment or failure of a means of communication shall be sentenced to 6 to 10 years' imprisonment.

Anyone who assaults or unlawfully takes possession of vessels, aircraft, or any means of transporting people or cargo, or the goods being transported, shall be sentenced to 8 to 16 years' imprisonment.

Anyone who assaults a taxi or any other means of public transport in order to rob its crew or passengers of their belongings or possessions shall be sentenced to 10 to 16 years' imprisonment.

Whenever several people are involved in the commission of the offences set forth in this article, the penalty shall increase by one third.

Article 359. Anyone who damages railways or the machines, vehicles, tools or other objects or equipment associated with them shall be sentenced to three to five years' imprisonment.

Article 360. Anyone who, through neglect or poor performance of his or her skill or occupation, or failure to observe regulations, orders or instructions, threatens to cause a disaster on a railway shall be sentenced to 3 to 15 months' imprisonment.

If the disaster actually occurs, the sentence shall be one to five years' imprisonment.

Article 361. Anyone who damages ports, quays, airports, oil pipelines, gas pipelines, offices, workshops, installations, equipment, pipes, pylons, cables or any other means used by transport or communications systems shall be sentenced to two to five years' imprisonment.

If the action causes serious harm to public security, the penalty shall be three to six years' imprisonment, and if it leads to a disaster, the penalty shall be four to eight years' imprisonment.

Article 362. For the due application of criminal law, ordinary railways shall be understood to mean any iron-track transport means having metallic or pneumatic wheels or wheels made of solid polythene or rubber or solid latex, and powered by steam, electricity or a mechanical or magnetic engine.

Similarly, telegraph shall be understood to include telephones intended for public use and other communications tools and facilities.

Article 363. Apart from the cases provided for in the above articles, anyone who by any means whatsoever destroys, in whole or in part, or renders impassable roads or works used for public communication by land or sea, or removes, for such purpose, objects intended to ensure the safety of such roads or works, shall be sentenced to 3 to 30 months' imprisonment; if the action has the effect of endangering human life, the sentence shall be 18 months' to five years' imprisonment.

Article 365. Anyone who endangers human life by polluting or poisoning public drinking water or items intended for public consumption shall be sentenced to 18 months' to five years' imprisonment.

Article 366. Anyone who contaminates or adulterates food or medical substances or other items intended for sale, thereby rendering them harmful to health, shall be sentenced to 1 to 30 months' imprisonment; the same penalty shall apply to anyone who in any way attempts to sell or make available to the public the aforesaid contaminated or adulterated substances.

Article 462. Anyone who abducts a person in an attempt to obtain ransom from that person, or from a third party, in the form of money, items, assets or documents that may have a favourable legal effect on the guilty party or any other person indicated by the guilty party, even though the attempt does not succeed, shall be sentenced to 10 to 20 years' imprisonment. If the abduction is intended to cause alarm, the penalty shall be two to five years' imprisonment.

1.12. Subparagraph 3 (g) of the resolution requires States not to refuse the extradition of alleged terrorists on the grounds that the latter claim to have acted from political motivation. According to the supplementary report (at page 15), Article 6 of the Venezuelan Penal Code states that the extradition of an alien may not be granted for political offences or for breaches of law relating to such offences, or for any action not established as an offence under Venezuelan law. Please confirm that this exception does not represent a bar to the extradition of a person for terrorist acts which he claims were politically motivated.

In this regard, Venezuelan legislators were aware of the difference between political crimes and terrorism. However, it is important to note that even if a terrorist act has a political purpose, it is still terrorism, and therefore extradition is applicable.

Accordingly, the Supreme Court of Justice decided as follows in the matter of the extradition of the Colombian dissident José María Ballestas (Sentence of the Criminal Court of 10 December 2001):

> "Terrorism is a treasonable, wicked and many-sided crime that especially victimizes the inhabitants of those States in which the barbarous terrorist acts are committed. In general, its victims are the world's peoples, who suffer from

the fear that such attacks will reoccur everywhere. Terrorism is considered an international violation of human rights, and hence universal coalitions to deal with it have been formed.

Terrorism is made up of a series of atrociously inhumane acts, which are not political offences and should therefore always lead to extradition. It is inadmissible for a political motive to be enough to justify any sort of crime. **Political aims do not justify certain forms of struggle. Political crimes, as idealistic as they are or should be, are opposed to the most serious crimes and, although they may have a political aim, or so their authors claim, the character of ordinary crime should predominate, based on the preponderance theory, and there should be no international immunity whatsoever.**

Therefore: If such an attack on innocent people or private rights is committed by means of an act of such violence and treachery that unnecessary evils, havoc and terror are produced, it is considered to be indiscriminate terrorism, i.e., it is non-selective in choosing its targets and deliberately attacks innocent victims.

Terrorism, and especially indiscriminate terrorism, ignores the precepts of humanitarian criminal law, endangers innocent lives and often destroys them, thereby threatening basic liberties and flouting human rights, and hence disturbing the peace and preventing human co-existence by damaging basic social institutions; it is therefore a crime against humanity or 'delicta juris gentium' and does not deserve the advantage of being treated as a pure or idealistic political offence. Terrorism is a counterfeit political crime. It does not represent a legitimate and sound political motive, but rather a spurious and corrupt one; it is not a legitimate political ideal to deliberately attack innocent victims and even kill them. Terrorism is not a political crime that deserves to be rewarded. Such a reward would contradict justice, criminal law and the moral sense of the peoples of the world."

United Nations S/2003/775

Security Council

Distr.: General
30 July 2003

Original: English

Letter dated 29 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 23 April 2003 (S/2003/458).

The Counter-Terrorism Committee has received the attached third report from Chile submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-46273 (E) 290803 080903

Annex

Letter dated 11 July 2003 from the Permanent Representative of Chile to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

I have the honour to transmit to you herewith the second supplementary report of Chile, submitted pursuant to Security Council resolution 1373 (2001) in accordance with the request contained in your letter of 11 April 2003 (see enclosure).

I should be grateful if you could arrange for this report to be circulated as a document of the Security Council.

(*Signed*) Heraldo **Muñoz**
Ambassador
Permanent Representative

Enclosure

Second supplementary report submitted by Chile pursuant to Security Council resolution 1373 (2001)

[Original: Spanish]

1. Introduction

On 11 April 2003, the Counter-Terrorism Committee sent a letter to the Government of Chile expressing its thanks for the supplementary report submitted by Chile on 24 September 2002 in response to the Committee's request of 24 July 2002 pursuant to paragraph 6 of Security Council resolution 1373 (2001).

The Committee stated that its experts had given careful consideration to both Chile's supplementary report and its original report with regard to the measures taken by Chile to implement the resolution and the issues relating to assistance and guidance for implementing it.

In that connection, the Committee prepared further questions and comments for consideration by the Government of Chile with regard to the implementation of resolution 1373 (2001). Chile hereby submits its response to the Committee's new set of questions.

2. Implementation measures

1.2 Progress report on the enactment of the bill which establishes penalties for collecting or providing funds for terrorist acts; adaptation of domestic legislation to bring it into line with the International Convention for the Suppression of the Financing of Terrorism.

The ratification by Chile of the above-mentioned Convention requires the amendment of Chilean legislation on terrorism in order to define as specific offences the activities described in the Convention. To that end, a bill specifically designed to penalize the collection or provision of funds for terrorism has been sent to the National Congress.

The bill is currently before the Joint Committee[1] in the third and final phase of the legislative approval process stipulated by the Constitution. Therefore it is almost certain that it will be approved and enter into force no later than August 2003.

The bill imposes a penalty on anyone who solicits, collects or provides funds by any means, directly or indirectly, for use in the commission of any terrorist offence (as defined in Act No. 18,314 on counter-terrorism). The penalty for this offence is medium-term rigorous imprisonment in the minimum or medium degree (up to 3 years).

[1] At this stage the Senate and Chamber committees work together (as the Joint Committee) and resolve only the points of difference in the positions of the two Committees. In this case, there were only two such differences, which are of technical interest but do not involve substantive disagreements on criminal policy.

It should be noted that this offence is quite subsidiary in application. Under the Chilean criminal justice system, it would usually be appropriate to apply the penalty for the offence of unlawful terrorist association, which carries a heavier sentence, or, where appropriate, for the specific terrorist offence for which the person provided the funds and, is therefore regarded as an accessory before the fact or even, if aware of the specific offence for which the funds are provided, as a co-perpetrator; if none of these situations apply, the penalty for the financing offence in question would be applied or, if unlawful association were involved, the penalty for that offence would be applied.

1.3 The Counter-Terrorism Committee would appreciate a progress report on the enactment of the bill establishing the Financial Analysis and Intelligence Unit, which also introduces the concept of a suspicious financial operation or transaction.

On 12 June 2002, the executive branch introduced in the Chamber of Deputies a bill that, inter alia, extends the definition of the offence of money-laundering to include other underlying offences, such as those included in the act defining terrorist conduct, the act on the control of firearms and the legislation on child pornography and prostitution, and also amends the subjective elements of the definition of the offence in question. Under the new bill, the offence could be committed through negligence and not, as provided for by the previous text, simply where fraudulent intent is involved.

Following an exhaustive legislative approval process, the bill was adopted by the Chamber of Deputies in late 2002 and referred to the Senate for the second phase of the legislative approval process stipulated by the Constitution. It is currently before the Senate and has been approved in both general and specific terms. However, the Senate has made a number of recommendations with respect to the bill and it is hoped that, once they have been approved, the bill will be promulgated and published as an act of the Republic.

1.4 Does the bill establishing the Financial Analysis and Intelligence Unit impose a legal obligation on financial institutions and other intermediaries, such as lawyers, accountants and notaries, when engaged in brokering activities, to report suspicious transactions? The Committee would further appreciate receiving copies of the relevant provisions.

The bill establishing the Financial Analysis and Intelligence Unit and amending the offence of money-laundering requires all the following natural and legal persons to report to the Unit any suspicious acts, transactions or operations identified in the course of their activities:

- Banks and other financial institutions
- **Factoring firms**
- Leasing companies
- Foreign Investments Committee
- Foreign exchange firms and other entities authorized to handle foreign currency
- Credit card issuers and operators

- Currency and securities transfer and transport firms
- Stock exchanges
- Stockbrokers
- Securities agents
- Insurance companies
- Mutual fund administrators
- Operators of futures markets and options exchanges
- **Legal representatives of duty-free zones**
- Casinos, bingo halls and racetracks
- Customs agents
- Auction houses
- **Real estate agents**
- Notaries and registrars.[2]

In addition to establishing this obligation, the bill states that information provided in good faith by such persons absolves them of liability.

1.5 The Committee would be grateful to have an outline of the legal and other mechanisms available for regulating alternative money remittance.

In this respect, the Superintendency of Banks and Financial Institutions has published chapters 1 to 7 of the updated compilation of the regulations governing electronic transfer of information and funds relating to the provision of banking services and the carrying out of interbank transactions through the transmission of messages or instructions to a computer connected to information networks.

The services include not only electronic transfers of funds but other transactions as well. "Electronic transfer of funds" means transactions carried out by electronic means which result in debits or credits to accounts, such as the automatic transfer of funds by a client from one account to another, payment orders to credit third party accounts, use of debit cards, the withdrawal of funds by debiting current accounts, money transfers carried out using automated teller machines and so on. Detailed information on the specific regulations is attached.

1.6 Freezing of assets

A. Offence of money-laundering: provisions of Act No. 19,806 concerning the procedure for freezing assets

(1) Without prejudice to the applicability of the general rules on impoundment of objects and assets in connection with any terrorist offence, including unlawful association, as well as other offences under ordinary law,[3] the issue of the freezing of assets as it relates to the offence of laundering the proceeds of terrorism is addressed in the bill establishing the Financial Analysis and Intelligence Unit and amending the provisions of the Penal Code relating to money-laundering and in Act

[2] The entities in bold and underlined were included by the Senate.

[3] See section B on the general rules.

No. 19,366 on the traffic in narcotic drugs, as recently amended in that regard by Act No. 19,806.

(2) In general terms, it should be noted that the aforementioned bill, as well as the other rules alluded to, provide comprehensively for the freezing of assets with no restrictions on the items covered — in other words, they are not limited to assets or funds deposited in accounts — with the sole, constitutionally mandatory restriction that such a procedure requires judicial authorization.

(3) Below is an outline of the rules that, under the bill, would apply to the offence of money-laundering and are already largely applicable to other offences under the Chilean legal system:[4]

(a) Article 25 of the bill establishing the Financial Analysis and Intelligence Unit and amending the provisions of the Penal Code relating to money-laundering (*Official Gazette* No. 2975-07, second phase of the legislative approval process required under the Constitution) provides that all the rules contained in Act No. 19,366 on the illicit traffic in narcotic drugs and psychotropic substances and the provisions of any other act superseding or amending it that deal with the following matters shall be applied in respect of the offences described in articles 20 and 21 (laundering of proceeds from, inter alia, terrorism):

1. Investigation: in particular, collaboration by State agencies; the power of the Public Prosecutor's Office to institute proceedings outside the national territory or without the prior knowledge of the individual concerned and international cooperation in general; the lifting of banking secrecy; no charge for information required during the investigation; special investigative techniques, such as monitored delivery or transactions, the use of undercover agents and informers, the interception of communications and other technical methods; protection of individuals assisting the investigation, including disguising their identity and appearance, changing their identity, maintaining confidentiality regarding certain proceedings, records or documents as a protective measure where their safety is at risk, imposing penalties in case of violation and allowing them to testify in advance (...)

2. Precautionary measures and impoundment: option of ordering precautionary measures without first notifying the individual concerned, items susceptible to impoundment and confiscation and the intended use of the impounded property or proceeds therefrom.

(b) With respect to this issue, Act No. 19,366 on the illicit traffic in narcotic drugs and psychotropic substances, as amended by Act No. 19,806, provides that the authorities and the officials or employees of any of the State administrative services or of private-law entities in which the State or its institutions have a majority or equal stake or interest must actively collaborate with the Public Prosecutor's Office in the investigation of the offences the Act describes (article 16).

Article 16 goes on to state that the Public Prosecutor's Office may make enquiries and institute proceedings abroad with a view to obtaining information about the source or origin of the property, assets, money, profits, advantage or benefit referred to in article 12 and may request direct assistance from Chilean diplomatic missions and consular posts.

[4] See section B on the general rules.

The rule goes on to state that the Public Prosecutor's Office may request the judge to order the following precautionary measures without the need for prior notification of the individual concerned, before the investigation becomes official:

1. Prevent, for a maximum of sixty days, persons who, with good reason, are suspected at least of being linked to one of the acts referred to in article 12 of the Act (laundering of assets) from leaving the country. To that end, the restraint and the lifting of it must be communicated to the *Policía de Investigaciones* and the *Carabineros*. In any event, the order shall expire after sixty days by operation of law and the aforementioned police force must take official note of that fact;

2. Order any precautionary measure against property necessary to prevent the use, exploitation, benefit or allocation of any type of property, assets or cash deriving from the offences forming the basis of the proceedings. To that end, and without prejudice to the other powers conferred by law, the judge may, inter alia, issue a restraining order against the conclusion of certain deeds and contracts and the recording thereof in any type of register; order the retention in banks or other financial bodies of deposits of any type; block transactions involving shares, bonds or debentures; and, in general, prevent unlawful proceeds from being converted in such a way that their criminal origins are concealed or disguised.

Lastly, article 16 of Act No. 19,366 also provides that, with the authorization of the judge responsible for procedural safeguards (*juez de garantía*), to be granted in accordance with article 236 of the Code of Penal Procedure, the Public Prosecutor's Office may take the following steps without first notifying the individual concerned:

- Order the handing over of information or copies of documents relating to current accounts, deposits or other operations subject to secrecy or confidentiality, belonging to natural or legal persons or groups under investigation. Banks and other entities and natural persons authorized or empowered to operate in the financial, securities, insurance and exchange markets must provide that information promptly (...).

B. General rules currently in force concerning the impoundment and preservation of objects of all kinds (including all types of assets) in connection with proceedings for any serious or ordinary offence (Code of Penal Procedure of 2000)

1. Without prejudice to the special rules that apply to money-laundering, as presented in section A, it should be recalled that the Chilean legal system currently provides — with judicial authorization — for the freezing of funds or assets of all kinds in connection with any serious or ordinary offence. The legal concept of acting as accessory after the fact, in this case in relation to a terrorist offence, by profiting from its effects (as defined in article 17, No. 1, of the Penal Code), allows for the application of such measures in cases involving the laundering of proceeds of terrorist offences.

2. The relevant rules are to be found in the Code of Penal Procedure of 2000 and the General Banking Law (Ministry of Finance Decree-Law DFL No. 3 of 1997). The particular measure permitting the freezing of assets is impoundment.

3. The first of these provisions is in article 187 of the Code of Penal Procedure of 2000, which reads as follows:

"Article 187. *Objects, documents and instruments*. Objects, documents and instruments of any kind that appear to have been used or to have been intended for use in the commission of the act under investigation, or those that arise from that act, or those that might serve as evidence, as well as those found at the scene of the incident referred to in paragraph (c) of article 83, shall be collected, identified and kept under seal. In all cases, a record shall be made of the procedure, in accordance with the usual rules.[5]

"If the objects, documents or instruments are found in the possession of the accused or in that of another person, they shall be impounded in accordance with this chapter. However, objects, documents and instruments found in the possession of an accused who is detained in accordance with article 83 (b), may be impounded immediately."

From the provisions of article 220 of the Code of Penal Procedure of 2000, which specifically excludes certain items from the impoundment procedure, it is clear that impoundment does apply to funds, assets and economic resources of all kinds. As can be seen below, the only objects that the Chilean legal system excludes are those whose impoundment might compromise the right to a defence or the family ties, privacy or honour of the individual. Article 220 of the Code of Penal Procedure of 2000 reads as follows:

"Article 220. *Objects and documents not subject to impoundment*. No order may be given to impound or require the handing over, as provided in article 217, second paragraph, of:

"(a) Communications between the accused and persons who may refuse to testify because they are related to the accused or by virtue of the provisions of article 303;

"(b) Notes that persons mentioned in item (a) above may have taken down about communications from the accused or about any circumstance regarding which they have the right to refuse to testify; and

"(c) Other objects and documents, including the results of examinations or diagnostic tests related to the health of the accused, to which, by their nature, the right not to testify applies.

"(...)"

The impoundment procedure described in article 187 above, which, as mentioned, includes the freezing of current accounts or funds in general, is governed by article 217 of the Code of Penal Procedure of 2000, which states:

"Article 217. *Impoundment of objects and documents*. The objects and documents related to the act under investigation, those that may be subject to the penalty of confiscation and those that might serve as evidence, shall be impounded by court order at the request of the prosecutor, when the person in whose possession they are found does not hand them over voluntarily or if the requirement that they should be handed over voluntarily would jeopardize the outcome of the investigation.

[5] Note that the rule expressly refers to objects of any kind.

"If the objects and documents are found in the possession of a person other than the accused, instead of ordering their impoundment, or before proceeding to impoundment, the judge may order that person to hand them over. In such a case, the enforcement measures applicable to witnesses shall obtain. However, such an order cannot be given to persons who are permitted by law to refuse to testify.

"When the information available supports a reasonable presumption that the objects and documents are to be found in a place of the sort mentioned in article 205, the procedure described in that article shall be followed."

Article 188, first paragraph, of the Code of Penal Procedure of 2000 provides, in relation to the preservation of property, that items collected during the course of the investigation shall be kept in the custody of the Public Prosecutor's Office, which must take the measures necessary to prevent any deterioration.

Lastly, the Code of Penal Procedure of 2000 contains a rule of considerable practical scope whereby even objects unrelated to the act under investigation may be impounded. The article reads as follows:

"Article 215. *Objects and documents unrelated to the act under investigation.* If, during the inventory, objects or documents are discovered that suggest the existence of a punishable act different from that which formed the basis of the case from which the order arose, they may be impounded by court order. Such objects and documents shall be kept by the prosecutor's office."

4. Also relevant are some of the specific rules contained in the General Banking Law (Ministry of Finance Decree-Law DFL No. 3 of 1997) that constitute exceptions to the rule of banking secrecy, in view of the overriding public interest that judicial proceedings entail.

To begin with, the Law establishes a general duty on the part of public officials responsible for the oversight of banks and financial institutions to report crimes. Article 10 of the Law provides that the Superintendent of Banks and Financial Institutions must report to the Public Prosecutor's Office actions that appear to be criminal of which he learns in the course of exercising his oversight function at any institution under his supervision.

With specific reference to banking secrecy, exception is expressly made for cases that are the subject of an investigation in connection with judicial proceedings. Article 154 of the Law, after providing for secrecy or confidentiality for deposits or investments of any kind accepted by banks, specifies that ordinary and military courts, in the cases before them, may order information to be submitted relating to specific transactions that have a direct bearing on the case in relation to deposits, investments or other operations of any kind involving persons who figure in the proceedings as party or accused, or may order their examination, if necessary.

Lastly, Article 154 provides that public prosecutors, with authorization from the judge responsible for procedural safeguards (*juez de garantía*), may also examine or ask for the submission of information of the kind mentioned in the foregoing paragraph that is directly related to the investigations being carried out under their responsibility.

C. Freezing of assets on reasonable suspicion of links with terrorist acts

In the light of sections A and B above, there can be no doubt that the freezing of assets or funds would be allowable in such a situation. Only two conditions must be fulfilled: the existence of a crime (well-founded suspicion thereof) and judicial authorization. Moreover, when the bill discussed above becomes law, so that laundering of proceeds of terrorist activities is defined as a crime, there will be more instances in which the measure may be applied, although most of them would already be subsumed under the heading of profiting as accessory after the fact as defined in article 17, No. 1, of the Penal Code, described above.

D. Ability to freeze assets upon the request of a foreign State

It is indeed possible to freeze assets upon presentation of such a request to the Public Prosecutor and his corresponding application to the competent judge of procedural safeguards (*juez de garantía*). In general, the procedures and formalities to be followed are to be found in the reply regarding implementation of paragraph 2(f) of the resolution in the initial report of the Government of Chile to the Committee (S/2002/5).

1.7 Criminalization of recruitment of members of terrorist groups

It should recalled that a person may be held criminally liable not only for unlawful terrorist association but for any form of unlawful association under articles 292 ff of the Penal Code.

In that regard, the argument that it is not always the case that the person responsible for recruitment is a member of the unlawful association is debatable. In the Chilean view, the recruiter is necessarily a member of the association.

The situation would be different if a person were operating from Chile, for example, and delegated the task of recruitment to other persons operating abroad who did not belong to the organization and were unaware of its true purpose, as postulated in the Committee's question. Although this is a somewhat laboured hypothesis, since successful recruitment would be difficult under those conditions, it should be borne in mind that, in accordance with the ubiquity principle now commonly accepted in comparative law, as well as Chilean law,[6] an offence can be considered to be committed in any of the countries in which a part of the offence was carried out. That being the case, if the incitement proceeded from Chile, the conduct could certainly be prosecuted in Chilean territory.

A different question arises, however, in the case of organizations that intend to commit terrorist acts only in foreign territory. In such cases, the ubiquity principle, which, as already mentioned, is widely recognized in comparative law,[7] would make it possible to prosecute the act by invoking either the law of the country where one

[6] The ubiquity principle (according to which both the country in which an action was initiated and the country in which it produced its effects have jurisdiction to try the offence) is the predominant doctrine in Chilean law (and in comparative law). In Chile, the principle of ubiquity is upheld in *Novoa* I, p. 167 ff; *Cury* I, p. 193; and *Politoff* I, p. 121; *Garrido* I, p. 133, considers it predominant. It is significant that of these authors Cury and Garrido are currently serving on the Supreme Court of Chile. The principle has long been recognized in Chilean jurisprudence (see, for example, the Supreme Court decision of 14 September 1964).

[7] For example, article 6 of the Italian Penal Code and article 9 of the German Penal Code — to mention just two of the comparative systems that have had a major influence in Chile — enshrine the ubiquity principle in legislation.

or more members of the unlawful association are to be found or the law of the country where the offences in question are to be committed. The foregoing would apply, that is, assuming that unlawful association were defined as an offence in all legal systems of the world or that terrorist offences were penalized in all legal systems from the conspiracy or incitement stage. In such case, moreover, if one of the participants happened to be temporarily in Chile, that person could be extradited on request in accordance with the general rules.

1.8 Outline of the provisions of Act No. 17,798 on arms control (Arms Control Act), with particular reference to the provisions limiting acquisition

A. Arms control; authority responsible and categories of arms or materials subject to controls

With regard to arms control, the Arms Control Act provides that the Ministry of Defence, acting through the Directorate of National Mobilization, shall be responsible for oversight and control of weapons, explosives, fireworks and pyrotechnic articles and other similar devices covered by the Act (article 1).

The Act goes on to list the types of arms or materials that are subject to the controls established by the Act (article 2), namely:

(a) Military materiel, meaning weapons of any kind manufactured for use in wartime by the armed forces, and means of land, sea and air combat, manufactured or specially adapted for this purpose;

(b) Firearms of all calibres and their parts and components;

(c) Ammunition and cartridges;

(d) Explosives, bombs and other similar devices and their parts and components;

(e) Chemicals essentially capable of being used to manufacture explosives or to serve as a basis for the production of ammunition, projectiles, missiles or rockets, bombs, cartridges and tear-producing or biological weapons;

(f) Facilities intended for the manufacture, assembly, stockpiling or storage of such elements; and

(g) Fireworks, pyrotechnic articles and other similar devices and their parts and components. In the latter case, the provisions of articles 8, 14A, 19 and 25 of this Act do not apply.

B. Restrictions on the possession and manufacture of weapons

General restrictions on access

1. First of all, there is an absolute prohibition: in no case may anyone possess or hold what are designated as "special weapons", that is, chemical, biological and nuclear weapons (article 3, last paragraph).

2. Then there is a general subjective prohibition. No one (except persons authorized by law) may possess or hold sawn-off shoulder weapons; side arms of any calibre that are totally automatic; camouflaged weapons, that is, weapons disguised to appear harmless; machine guns; sub-machine guns; tommy guns and any other automatic or semi-automatic weapon that is highly destructive or effective, whether because of its power, the calibre of its projectiles or its targeting

mechanisms. In addition, no one may possess or hold weapons manufactured on the basis of asphyxiating, paralysing or poisonous gases, corrosive substances or metals that splinter when the gases expand, or devices for launching or activating them (article 3, first and second paragraphs).

3. Exceptions to the general subjective prohibition mentioned in point 2 above are made for specific institutions that perform law enforcement and national defence functions, namely, the Chilean armed forces and the *Carabineros* (paramilitary police). The *Policía de Investigaciones* (investigative police), the *Gendarmería* (prison guards) and the Directorate of Civil Aviation are excepted only with respect to the possession of light automatic and semi-automatic weapons, chemical, tear-producing, paralysing or explosive deterrent agents and grenades, in the quantities authorized by the Ministry of Defence on the recommendation of the director of the particular service. Such weapons may be used in the manner specified in their respective statutes and operating rules.

Restrictions on the possession or holding of authorized weapons (those not included in the list of prohibited weapons)

The following restrictions apply to the possession or holding of authorized weapons (articles 5 and 7 of the Act):

1. Any firearm (ordinary or authorized) must be registered with the appropriate authority in the name of its possessor or holder (article 1).

2. Registration authorizes the possessor or holder to keep the weapon only at the declared premises, which may be the place of residence, place of work or premises to be protected.

3. The authorities shall allow registration of the weapon only if, in their judgement, it can be presumed from the background of its possessor or holder that he or she will comply with the provisions of the foregoing paragraph.

4. The authorities may not grant authorizations and permits for or allow registration of more than two firearms per person, except in the case of eligible natural or legal persons upon special decision of the Directorate of Recruitment and Mobilization of the Armed Forces.

5. The Directorate of Recruitment and Mobilization shall keep a national register of arms registrations (National Arms Register).

With regard to the carrying of authorized weapons, the Act provides (in articles 6 and 7) that:

1. The possessors of registered weapons (see above) may carry weapons outside the authorized premises (place to be protected) only with a permit from the appropriate authorities.

2. Such permits shall be recorded in the National Arms Register.

3. The permit to carry shall be valid for a maximum of one year and authorizes only the permit holder to carry a weapon.

4. The authorities may not grant authorizations and permits for or allow registration of more than two firearms per person, except in the case of eligible natural or legal persons upon special decision of the Directorate of Recruitment and Mobilization.

5. The Directorate and other authorities mentioned may deny, suspend, attach conditions to or restrict the authorizations and permits the Act provides for without having to state a reason, except in the case of registration of possession or holding.

With regard to the manufacture of authorized weapons, the Act (article 4) provides that:

1. The authorization of the Directorate of National Mobilization is required in order to manufacture, assemble, import or export weapons of the types subject to control under the Act or to establish facilities for the manufacture, assembly, stockpiling or storage of such weapons.

2. No person, natural or legal, may possess or hold the weapons and devices listed in items (a), (b), (c), (d) and (e) of the second paragraph of section A above or transport, store, distribute or conclude contracts regarding such weapons and devices without the authorization of the Directorate of National Mobilization or the appropriate authorities.

3. The authorization required pursuant to the foregoing paragraph is to be issued by armed forces garrison commands or the highest-ranking *Carabineros* authority, designated in either case by the Minister of Defence on the recommendation of the Director of National Mobilization, who may also recommend other military or *Carabineros* authorities for that purpose at the local level.

4. Without prejudice to the foregoing, the national testing office (*Banco de Pruebas de Chile*) shall advise the Directorate of National Mobilization, through the Army Research and Control Institute (IDIC), in evaluating the level of hazard, stability and quality of the weapons and devices under its oversight. In the case of military materiel, the level of hazard, stability and quality is tested and certified by the Armed Forces Specialized Services.

5. The Director of National Mobilization, through the Minister of Defence, may request the technical advice of agencies or staff belonging to the armed forces institutions in monitoring the process of manufacture, production and inventory at plants authorized to produce military materiel.

C. Offences

1. Offence of unlawful association as defined in the Arms Control Act (organization of armed parties) (article 8)

Penalties are imposed on those who organize, belong to, finance or equip or who instruct, incite or induce others to create and operate private militias, combat groups or militarily organized parties armed with any of the materials or weapons mentioned in the Act.

Penalties are also imposed on those who knowingly assist in the creation and operation of private militias, combat groups or militarily organized parties.

If the groups are armed with prohibited materials or devices, the penalty is greater (long-term rigorous imprisonment in any degree, ranging from 5 years and a day to 20 years imprisonment). Otherwise (if conventional or authorized weapons are involved), the penalty ranges from medium-term rigorous imprisonment or internal exile in the maximum degree to long-term rigorous imprisonment or internal exile in the minimum degree (from 3 years and a day to 10 years of rigorous imprisonment or internal exile).

2. Offence of unlawful possession or holding of weapons (articles 9, 12 and 13)

Penalties are imposed on those who possess or hold, without the proper authorization, any of the devices or weapons subject to control under the Act. The penalty ranges from medium-term rigorous imprisonment in the minimum degree to long-term rigorous imprisonment in the minimum degree (from 61 days to 10 years of rigorous imprisonment).

In the case of possession of prohibited weapons and devices (including special weapons), the penalty is increased and ranges from medium-term rigorous imprisonment in the medium degree to long-term rigorous imprisonment in the medium degree (from 3 years and a day to 15 years of rigorous imprisonment).

If the offence in question involves more than two firearms, the penalty is increased by one or two degrees.

There is a substantial reduction of the penalty (fine) if it can be shown that the reason for possessing or holding the weapons or devices was not to cause a public disturbance, to attack the armed forces or the forces of order and public security or to perpetrate some other crime. The reduction does not apply in the case of possession of prohibited weapons.

It is considered a ground for exemption from criminal liability for unlawful possession or holding of prohibited weapons if the possessor or holder surrenders them to the competent authority before proceedings are instituted.

3. Offence of unlawfully carrying weapons (articles 11, 12 and 14)

Penalties are imposed on those who carry firearms without the requisite permit. The penalty ranges from medium-term rigorous imprisonment in the minimum degree to long-term rigorous imprisonment in the minimum degree (from 61 days to 10 years of rigorous imprisonment).

In the case of possession of prohibited weapons and devices (including special weapons), the penalty is increased to long-term rigorous imprisonment in the minimum or medium degree (from 5 years and a day to 15 years of rigorous imprisonment).

If the offence is committed with more than two firearms, the penalty is increased by one or two degrees.

The same reduction of penalty allowed in cases of unlawful possession is allowed for this offence on the same conditions. The reduction does not apply if prohibited weapons are involved.

4. Offence of unlawful manufacture of weapons (articles 10 and 12)

Penalties are imposed on those who, without the proper authorization, manufacture, assemble, import, bring into the country, export, transport, store, distribute or conclude contracts regarding the weapons or devices subject to control under the Act. The penalty ranges from medium-term rigorous imprisonment in the medium degree to long-term rigorous imprisonment in the medium degree (from 541 days to 15 years of rigorous imprisonment).

If the offence is committed with more than two firearms, the penalty is increased by one or two degrees.

The same reduction of penalty allowed in cases of unlawful possession is allowed for this offence on the same conditions.

5. Confiscation (article 15)

Without prejudice to the personal or pecuniary penalty, the sentence may also order the confiscation of the items subject to control under the Act, which shall be handed over to the military arsenal.

The most recent version of the text is that of 31 May 2002.

1.9 Implementation of paragraphs 2 (d) and (e) of resolution 1373 (2001)

A. Criminalization of the financing, planning, facilitation and commission of terrorist acts aimed at other States or their citizens

This issue (ordinary unlawful association and unlawful terrorist association) was discussed at length in Chile's initial report to the Committee in the replies concerning paragraph 1 (b) and paragraph 2 (a) of the resolution.

Secondly, note should also be taken of the information given under point 1.2 above concerning the bill penalizing the collection of funds for and the financing of terrorism.

Thirdly, it should be pointed out that under the Chilean legal system accessories to a crime are held criminally liable along with the principals (articles 14, 15, 16 and 17 of the Penal Code). Penalties for accessories before and during the fact are one degree less than those for principals, and penalties for accessories after the fact, are two degrees less.

Instigators and "intellectual perpetrators" are considered principals. All cases of mediated perpetration are covered by the definition (article 15, No. 2 and part of No. 3 of the Penal Code).

Moreover, penalties are imposed not only for offences that have been carried out but also for those that have been attempted. In determining the penalty, a distinction is drawn between completed but frustrated attempts and incomplete attempts (attempts in the narrow sense). Frustrated attempts are subject to a penalty one degree less than that applicable to the corresponding completed offence, and incomplete attempts are subject to a penalty two degrees less.

Furthermore, on an exceptional basis, the law provides for punishment for acts that are preparatory or not related to execution (prior to any attempted offence) such as conspiracy or incitement. This applies to all terrorist offences, in respect of which, pursuant to Act No. 18,314 (article 7), conspiracy to commit a terrorist act and serious and plausible threat to commit such an act are penalized. It is therefore possible to penalize the planning of a terrorist offence and even other activities which precede those related to actual execution.

Lastly, with respect to cases involving the planning of terrorist acts aimed exclusively at other States or their citizens, see the response given under point 1.7 above concerning terrorist recruitment and in particular the ubiquity principle and the jurisdiction of affected foreign States.

B. Prosecution of a Chilean or foreign national found in Chilean territory who cannot be extradited

The Chilean authorities may refuse a request for extradition on the grounds that the defendant is a Chilean national only if such a right is conferred by treaty,

since there are no constitutional or legal rules stating that a request for extradition may be refused because the defendant is a Chilean national.

The multilateral and bilateral treaties to which Chile is a party that accord the right to refuse extradition on the grounds of nationality also provide for the obligation to prosecute the accused in Chile in application of the principle of *aut dedere aut judicare* (extradite or prosecute).

Furthermore, with regard to foreign nationals, there are no reasons other than those of a purely criminal-law nature to refuse requests for extradition. Therefore, an extradition request would be refused only because certain objective conditions binding on Chile in any case were not met. It would be impossible to proceed, for instance, because of the lack of double criminality, inadmissibility for minor offences carrying penalties of less than one year, and so on.

1.10 Report on the outcome of the study conducted by Chile in order to determine which conducts described in the international instruments to which Chile is a party have not yet been criminalized under Chilean law

The above-mentioned study has not been conducted exhaustively. A preliminary description of the conventions implemented, fully or partially, by means of the Chilean Act establishing penalties for terrorist conduct was contained in Chile's response to the Financial Action Task Force on Money Laundering (FATF) self-assessment questionnaire (attached). Generally speaking, most of the types of conduct described in those instruments are covered by the Act.

1.11 The Committee would be grateful to receive a copy of any reports or questionnaires submitted to other organizations involved in monitoring international standards

Attached is a copy of response to the self-assessment questionnaire designed to obtain information about the extent to which States have implemented the FATF recommendations on terrorist financing, which was submitted to the Financial Action Task Force for South America (GAFISUD) by the Chilean Government on 9 May 2002. The document was produced by the National Council for the Control of Narcotic Drugs in collaboration with other relevant Government departments.

2. Assistance and guidance

Chile is grateful for the assistance and advice offered by the Committee in connection with the implementation of resolution 1373 (2001).

In this respect, and as mentioned in the report recently submitted to the Security Council Committee established pursuant to resolution 1267 (1999), Chile would be grateful for information on comparative law and the constitutional, legal and administrative principles allowing other legal systems to freeze assets without recourse to criminal proceedings. Although this issue does not, strictly speaking, fall within the Committee's sphere of competence, it is closely linked to its function.

Lastly, the Government of Chile wishes to express its thanks to the Committee for its efforts and reiterates its willingness to continue cooperating in the necessary areas.

United Nations S/2003/776

Security Council

Distr.: General
30 July 2003

Original: English

Letter dated 28 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 September 2002 (S/2002/995).

The Counter-Terrorism Committee has received the attached supplementary report from Kyrgyzstan, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-45114 (E) 180803 220803

Annex

Letter dated 22 July 2003 from the Permanent Representative of Kyrgyzstan to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to submit to you herewith the supplementary report prepared by the Government of the Kyrgyz Republic pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Kamil **Baialinov**
Ambassador
Permanent Representative of the Kyrgyz Republic
to the United Nations

Enclosure

[Original: Russian]

Supplementary report of the Government of the Kyrgyz Republic in response to the preliminary questions and remarks of the United Nations Security Council Counter-Terrorism Committee

Paragraph 1 (a)

Question:

Please provide the CTC with an outline of, and a progress report on, the Act "on counteracting the legalization (laundering) of income obtained by criminal means". In which cases will this Act be applicable to the financing of terrorist organizations? Please explain how the provisions of the draft Presidential decree "on measures to prevent the use of the Kyrgyz Republic's financial system for the legalization (laundering) of funds obtained by illegal means and to prevent to financing of terrorism" will implement paragraph 1 of the resolution. Please inform the CTC when the Presidential Decree has entered into force.

Response:

The Bill on combating the financing of terrorism and the laundering of income obtained by criminal means was approved by the Government (decree No. 818 of 2 December 2002) and referred to the Parliament for consideration. It has now been approved by the Budget and Finance Committee of the Legislative Assembly of the Parliament and will be considered by the plenary session of that body.

The overall aim of the Bill is to establish legal arrangements to combat the financing of terrorism and the laundering of income obtained by criminal means in order to defend the rights and legitimate interests of citizens, the State and society and the integrity of the financial system of Kyrgyzstan against criminal harm. The Bill is based on accepted norms and international principles to prevent the financial system from being used to finance terrorism and launder money obtained by criminal means. Its main function is to set up a system of measures to prevent and combat those phenomena.

The Bill on counteracting the legalization (laundering) of income obtained by criminal means is currently being discussed by the Parliament, and the draft presidential order "on measures to prevent the use of the Kyrgyz Republic's financial system for the legalization (laundering) of funds obtained by illegal means and to prevent to financing of terrorism" is also at the finalization stage.

Question:

Please outline the instructions given to commercial banks (page 7 of the report) in order to facilitate the identification of suspicious operations.

Response:

Currently, commercial banks' handling of deposits is governed by the "temporary instructions for handling deposits" approved by Resolution No. 4/4 of

the National Bank of Kyrgyzstan, of 19 February 2003. In order to regulate banks' handling of deposits more closely, and to prevent accounts from being used for criminal purposes, the National Bank of Kyrgyzstan has been working on a new version of the instructions.

Although the Bill on combating the financing of terrorism and the laundering of income obtained by criminal means is still under discussion in the Parliament, the instructions contain recommendations for developing internal checks to prevent the legalization (laundering) of funds. The recommendations match the content of the Bill and should help to raise ethical and professional standards in the financial sector and to prevent the deliberate or inadvertent use of banks by dishonest customers.

With the aim of preventing suspicious transactions, the National Bank of Kyrgyzstan sent a Circular Letter (No. 212-3/880 of 28 February 2003) to banks and other financial and credit institutions with the authority to open and maintain accounts. It contained recommendations for drawing up rules for banks' internal monitoring of procedures for identifying and tracking their customers. It lays down a list of criteria for banks to use in determining which transactions should be monitored and for recognizing and detecting unusual activity.

A joint World Bank-International Monetary Fund mission was in Kyrgyzstan from 11 to 28 May 2002 and from 26 August to 9 September 2002 to implement a Financial Sector Assessment Program (FSAP). It made recommendations for countering money-laundering and the financing of terrorism and noted the need for a comprehensive approach to tackling those problems in conformity with the international standards of the Financial Action Task Force (FATF) and to drafting the necessary legislation.

Question:

Do informal banking networks (such as Hawala) exist in Kyrgyzstan? Please outline the legal provisions regulating them, if any.

Response:

The extent of transfers through alternative, informal networks (hawala, hundi and chop) is negligible, because article 776 of Kyrgyzstan's Civil Code stipulates that cash transfers between natural and legal persons within Kyrgyzstan are allowed without any restriction.

Paragraph 1 (b)

Question:

Please explain in which cases article 183 of the Criminal Code will be applicable to the financing of terrorist acts.

Response:

Article 183 of the Criminal Code — "Legalization of monetary assets or other property acquired by illegal means" — aims at protecting the country's economic system and money circulation against the entry of large amounts of unverified funds or other assets and at preventing organized crime aimed at generating profit.

It is a known fact that terrorist organizations are funded partly by illegally obtained money (proceeds from the sale of drugs, weapons and so on) which is laundered through the banking system and transport and construction companies. Operations to detect and institute criminal prosecutions against individuals for such acts under article 183 of the Criminal Code can be a pre-emptive measure leading to closure of the channels used to finance terrorist activities.

The National Bank of Kyrgyzstan has drawn up a Bill on amendments and additions to certain legislative acts of the Kyrgyz Republic, chiefly the Criminal Code and the Code on Administrative Responsibility. The draft has met all legislative requirements and is now in the Zhogorku Kenesh (it has already been approved by two committees). It was drawn up in order to establish a comprehensive legislative mechanism to combat the financing of terrorism and the laundering of income obtained by criminal means and to prevent a conflict of laws. The National Bank's comprehensive approach is reflected in the handling of such issues simultaneously not just in the country's civil legislation, but also in its administrative and criminal legislation. The two joint World Bank-International Monetary Fund FSAP missions which examined Kyrgyzstan's financial sector had indicated the need for such an approach.

The aim of the amendments to the Code on Administrative Responsibility is to establish administrative liability for concealing, distorting or failing to provide information on transactions involving monetary or other assets subject to compulsory monitoring because they meet the criteria laid down by the legislation on combating the financing of terrorism and the laundering of income obtained by criminal means or by a suitably empowered State entity in accordance with that legislation.

The aim of the amendments to article 183 of the Criminal Code is to establish criminal liability for large-scale transactions, involving cash or other assets clearly obtained by criminal means, intended to give the appearance of legitimate ownership, use and access to the monetary or other assets, and for the financing of terrorism. A note attached to that article specifies that individuals would escape criminal liability for such offences if they helped to reveal those offences and/or voluntarily handed over the monetary or other assets obtained by criminal means, provided that their actions did not involve another offence.

The existing wording of article 183 of the Criminal Code does not cover liability for the financing of terrorism.

Question:

How do Kyrgyz authorities intend to implement articles 2 and 4 of the International Convention for the Suppression of the Financing of Terrorism?

Response:

There is a proposal to add an article 226-1 to the Criminal Code, precisely to cover liability for the financing of terrorism. Until now, the Criminal Code has provided for such liability only for complicity in terrorism. During the drafting of this article, the National Bank of Kyrgyzstan was guided by the standards contained in articles 2 and 4 of the International Convention for the Suppression of the Financing of Terrorism, to which Kyrgyzstan acceded through Act No. 79 of 15

April 2003 (in the case of article 2, the National Bank acted in conformity with the country's traditions regarding standard-setting).

Paragraph 1 (c)

Question:

Please describe the procedure leading to the freezing of funds, other financial assets or economic resources suspected of belonging to terrorists or terrorist organizations.

Response:

In accordance with the Act on the National Bank of Kyrgyzstan, the National Bank, as the authority supervising and regulating the activities of banks and other financial and credit institutions, may halt, for the period established by its own normative acts, any banking transactions classified by national legislation as suspicious, at its own initiative or in response to a written request from the law enforcement agencies responsible for detecting and preventing financial wrongdoing.

Question:

How is a request by a foreign authority to freeze funds, etc., in Kyrgyzstan dealt with under Kyrgyz laws or regulations?

Response:

In accordance with the legal assistance agreements concluded by Kyrgyzstan, foreign authorities may request the National Bank of Kyrgyzstan to freeze the assets of financial or credit institutions through the appropriate law enforcement agencies.

Question:

Please elaborate on the "*sanctions provided for under banking legislation*" to the extent that they are relevant for the implementation of this subparagraph.

Response:

The procedure for freezing assets (sanctions) justifiably assumed to belong to terrorists or terrorist organizations is provided for in the Bill on combating the financing of terrorism and the laundering of income obtained by criminal means.

Kyrgyzstan's banking legislation provides that if banks or other banking and credit institutions whose activities are licensed by the National Bank of Kyrgyzstan are discovered to be in breach of economic standards, banking legislation and the normative acts and stipulations of the National Bank of Kyrgyzstan, or if they present no information or unreliable and/or incomplete information, the National Bank of Kyrgyzstan may:

- Issue a compulsory order to correct the violations immediately, or within a prescribed deadline;
- Introduce higher economic standards;
- Increase the level of compulsory reserves;

- Impose a fine representing no more than 1 per cent of paid-up capital per actual violation, in accordance with the procedure established by the Board of the National Bank;
- Impose a fine on individual executive officers, in the amount and under the procedure determined by national legislation;
- Require compulsory:
  (a) Replacement of some or all officials;
  (b) Conduct of financial improvements;
  (c) Recapitalization or reorganization;
- Require an unscheduled audit at the expense of the party being audited;
- Appoint temporary management for up to six months in order to safeguard assets;
- Suspend licences for up to six months; in addition, temporary management may be appointed for up to six months and some or all transactions covered by licences may be restricted;
- Revoke licences;
- Begin bankruptcy proceedings, in accordance with national legislation.

Paragraph 1 (d)

Question:

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

Response:

Resolution No. 13.2 of the Board of the National Bank of Kyrgyzstan, of 16 April 2003 (registered by the Ministry of Justice of Kyrgyzstan under number 37-03 on 22 April 2003), lays down requirements for the definition of offshore entities or individuals and offshore centres. The purpose of the resolution is to protect the safety, reliability and stability of Kyrgyzstan's banking and payment systems, to safeguard the interests of investors and other creditors of commercial banks, to prevent the laundering of money obtained by criminal means, to help combat the financing of terrorism and to ensure that banking transactions are transparent. In order to regulate and supervise the activities of commercial banks and other financial and credit institutions, a list of 42 States and territories (offshore centres) which grant favourable tax arrangements and/or do not require full disclosure and supply of information to banking supervision authorities has been adopted and attached to the decree.

On 26 April 2002, the Board of the National Bank of Kyrgyzstan adopted Resolution No. 20/12 on requirements for the definition of offshore entities or individuals. The purpose of the resolution is to protect Kyrgyzstan's reputation, financial, banking and payment systems, to safeguard the interests of investors and other creditors of banks, to prevent the laundering of money obtained by criminal means, to help combat the financing of terrorism and to ensure that banking transactions are transparent.

The resolution defines offshore entities or individuals as follows: *banks, subsidiary banks, holding companies, financial and credit institutions, natural and legal persons registered or resident in States or territories with favourable tax arrangements and/or States or territories which do not disclose and/or provide information to banking supervision authorities in accordance with the requirements and recommendations of the Basel Committee on Banking Supervision*. Those recommendations call for information and accounts regarding transactions carried out by financial and credit institutions to be disclosed and supplied to banking supervision authorities. The definition of offshore entities or individuals was introduced because some money-laundering transactions involve citizens or natural and legal persons of offshore centres.

Under the terms of the resolution described above, all types of transaction or deal between commercial banks and entities or individuals of offshore centres are *null*, except in the case of transactions or deals with entities or individuals of States or territories with an I-high rating under the financial regulation standards established by the Financial Stability Forum. Among the transactions and deals considered null are those carried out by commercial banks on their own behalf with entities or individuals of offshore centres (including dealings through correspondents), in other words, commercial banks' own transactions. The requirement is aimed at minimizing the risk of loss to investors and other creditors of a bank, and at preventing a bank itself from conducting transactions with entities or individuals of offshore centres. The classification as "null" assumes that all commercial bank transactions and deals are not taxable and that the likelihood of determining their actual value is infinitesimally small. Such transactions and deals are also considered losses under the provisions "on classification of assets and corresponding recording in reserves to cover potential losses and shortfalls", approved by Resolution No. 20/2 of the Board of the National Bank of Kyrgyzstan, of 26 April 2002, which require a 100 per cent reserve to be constituted to cover potential losses and shortfalls caused by banks' expenditure.

The classification as "null" of commercial bank transactions and deals with entities or individuals of offshore centres does not apply where relations are being conducted with subsidiaries which, while registered in offshore centres, are attached to head offices registered outside those offshore centres. This means that the resolution applies to representative offices (subsidiaries) of entities or individuals of offshore centres which are registered in Kyrgyzstan but have head offices in offshore centres.

Question:

Which practical steps have been taken in Kyrgyzstan in order to prevent the provision of material assistance to persons involved in terrorist activities as required by the "*Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crime and Other Threats to Stability and Security*"?

Response:

The Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crime and Other Threats to Stability and Security provides for cooperation in the taking of practical steps to ensure that the territory of States is not used for the creation of terrorist bases or training camps or for the preparation or organization of terrorist acts directed against other States and

their citizens, and in taking action to prevent the recruitment of persons for participation in the activities of terrorist and other extremist organizations and the provision of material assistance to the activities of such organizations.

On 26 November 2000, the President of Kyrgyzstan signed Act No. 92 "on the ratification of the Treaty between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan on joint action to combat terrorism, political and religious extremism, transnational organized crime and other threats to stability and security".

The law enforcement agencies and intelligence services of Kyrgyzstan are stepping up organizational and operational action against subversive and other harmful activities of international organizations of terrorists and religious extremists in Kyrgyzstan.

Active intelligence and counter-intelligence efforts are being focused on the Islamic Movement of Uzbekistan (IMU) and its military/political allies, both inside and outside the country. Those efforts include blocking of the channels used to "legalize" IMU fighters and of the plans by foreign centres and emissaries of terrorist organizations to use Kyrgyzstan as a forward base for moving to other countries.

With the aim of combating the formation of illegal armed groups, efforts are under way to track down and remove from illegal circulation weapons, explosives and ammunition. The staff and resources of Kyrgyzstan's National Security Service have also been focused on obtaining rapid and reliable information on the plans and intentions of international terrorist organizations, including IMU conspirators acting against the States parties to the Agreement and the Commonwealth of Independent States.

During the armed incursions by IMU fighters in 1999 and 2000, staff of the National Security Service conducted intelligence, counter-intelligence, anti-terrorist, search and screening operations directly where fighters were active and armed clashes were taking place. They also ensured the security of a variety of important political events in the country.

In order to have forewarning of plans for armed attacks by international IMU conspirators, the operational work was supplemented by greater exchanges of information with central and local authorities and with the forces of neighbouring States. Active steps are being taken to track down members of the Hizb ut Tahrir religious extremist group and members of IMU and to bring them to criminal trial.

Paragraph 2 (a)

Question:

Which practical steps have been taken in Kyrgyzstan in order to suppress the recruitment of members of terrorist groups as required by the "*Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crimes and Other Threats to Stability and Security*"?

Response:

Existing criminal law considers it an offence to recruit individuals for involvement in criminal activity, imposing imprisonment of up to five years. If the

offence harms the life or health of a person, it is punishable by imprisonment of up to 10 years.

The steps taken to halt the spread of religious extremist groups' ideology led Kyrgyzstan's internal affairs bodies to uncover 39 cases of propagation of religious enmity in the first quarter of 2003. Those cases resulted in 30 criminal trials, the detention of 33 individuals and the preventive registration of 1895 individuals, and the confiscation of 132 items of religious extremist literature, 871 pamphlets, 8 videos, 11 copies of plans to expand the Caliphate and one weapon.

Question:

Is there any provision in Kyrgyz law to prohibit the acquisition of firearms without a licence (especially at the time of purchase)?

Response:

Production, repair and trading of weapons and munitions in Kyrgyzstan require a specific permit (licence) issued in accordance with the Licences Act.

The Weapons Act restricts the circulation of civilian and service weapons.

In particular, the sale outside specialized stores without the written permission of the internal affairs authorities of second-hand weapons and munitions not included in the State register of civilian and service weapons, and of the owner's permit to possess and carry weapons.

Moreover, Kyrgyz legislation establishes criminal liability for "the illegal acquisition, transfer, sale, storage, transport or carrying of firearms, ammunition, explosive materials and explosive devices" (which are punishable by arrest for a period of up to six months or imprisonment for up to three years with a fine amounting to 200 to 500 times the minimum monthly salary). The same acts, committed by a group of persons on the basis of prior agreement or repeatedly, are punishable by imprisonment for a period of two to six years. Acts committed by an organized group are punishable by imprisonment for a period of three to eight years.

The import into and export from Kyrgyzstan of military firearms, edged weapons, individual sporting, hunting and gas weapons of self-defence and pneumatic weapons take place on the basis of a permit from the internal affairs authorities, taking into account the requirement of the Weapons Act. In addition, the Instructions on the work of the internal affairs authorities to monitor the circulation of civilian and service weapons and on the procedure for opening shooting ranges, target ranges, shooting and hunting stands and weapons repair workshops provide that weapons and ammunition are acquired abroad and imported into or exported from Kyrgyzstan by suppliers on the basis of a manufacturing and trading licence after the corresponding permit has been obtained from the Public Safety Board of the Ministry of Internal Affairs.

The import into Kyrgyzstan by suppliers of individual weapons and munitions for the conduct of technological tests or for exhibition purposes takes place on the basis of permits issued by the Public Safety Board.

Foreign nationals may acquire civilian weapons under permits issued by the Public Safety Board on the basis of applications by the Governments of the States of

which they are nationals on condition that they export the weapons from Kyrgyzstan not more than five days after acquiring them.

Hunting and sporting weapons may be imported into Kyrgyzstan by foreign nationals if they are in possession respectively of a hunting contract or an invitation to take part in a sporting event and of a permit from the Public Safety Board. The weapons must be exported within the period specified in the contract or invitation and indicated in the permit.

Foreign nationals are prohibited from importing into Kyrgyzstan and using in its territory all forms, types and models of weapons for purposes of ensuring their personal security, protecting the lives, health and property of other citizens, escorting cargoes and other purposes not indicated in the first part of this section, unless so provided in international agreements to which Kyrgyzstan is a party.

Question:

Please outline the Kyrgyz Republic's export control regime for weapons to the extent that it is relevant for the implementation of this paragraph.

Response:

Currently, control over the export and import of individual types of raw and other materials, equipment and technology, scientific and technical information, works and services and dual-purpose products which may be used to manufacture weapons of mass destruction or the means of their delivery, as well as armaments, military technology and other military technical materials, is conducted in accordance with the Export Controls Act, Licences, State Regulation of Foreign Trade Activity and Weapons Acts, and with resolutions of the Legislative Assembly of the Parliament of Kyrgyzstan of 8 June 1998 No. 1100-1 on approval of the procedure for the registration of the issue of licences of conduct of export-import operations and No. 1101-1 on approval of lists of groups whose export and import is conducted under licences. Regulations on Kyrgyzstan's export control system are currently being drafted, and a national list of controlled production is being drawn up.

Paragraph 2 (b)

Question:

Please provide information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security, with particular regard to the border controls preventing the movement of terrorists.

Response:

Kyrgyzstan's ministries and departments regularly exchange information derived from investigations, intelligence and forensic studies on:

Specific cases, instances and persons associated with illicit inter-State drug trafficking;

Vehicles, cargoes, postal consignments and routes utilized in illicit inter-State narcotics trafficking;

Methods of concealment and disguise used in transporting and marketing drugs;

New types of drugs appearing in illicit trafficking, the technologies for their manufacture and the substances used in it, and other information of mutual interest.

In addition, joint operations are conducted to arrest drug traffickers who have both interregional and international connections.

The Kyrgyz Border Service has set up at border checkpoints a unified interdepartmental information network which includes an automated border control system (ABCS) to monitor the entry, presence and departure of foreign nationals.

The aim of ABCS is:

To compile and store information on the recording of citizens' entry and exit and to provide statistical data for use in analysing migration processes;

To provide information support for the investigation and other concerned services.

The purpose of ABCS is to:

Speed up and simplify the passport control process and make it more effective;

Prevent entry using false documents and entry by persons legally prohibited from entering the CIS countries;

Identify persons under investigation who are of interest to the relevant services of the law enforcement agencies and foreign nationals and stateless persons illegally present in the territory of Kyrgyzstan.

The databank consists of the following components:

A database on individuals who have crossed, in either direction, the State border between a CIS country and a country outside CIS;

A database on vehicles;

A database on persons prohibited from entering or leaving Kyrgyzstan ("blacklists") with information on when they were blacklisted and for how long;

A database on lost and false documents.

ABCS was developed by the Interalliance company in accordance with the requirements of the Kyrgyz Border Service, taking into account the recommendations of the International Organization on Migration and the Russian, Belorussian, Georgian and Canadian border services.

Question:

Which Kyrgyz institutions are responsible for providing early warning to other States?

Response:

Kyrgyzstan participates in information exchange with other States with the purpose of preventing the commission of terrorist acts on both a bilateral and a multilateral basis, including through Interpol.

Early warnings to other States are channelled through the law enforcement agencies and security services (the Security Council of Kyrgyzstan, the National Security Service, the Ministry of Internal Affairs, the Office of the Prosecutor-General, the Border Service and the Ministry of Defence).

In addition, on 12 April 1996 the CIS member States concluded an Agreement on exchange of information relating to protection of the external borders on the basis of which national information systems were established and unified databanks on protection of the external borders of the States members of the Commonwealth were organized. The lists of types of information for mutual exchange between the border services of CIS member States includes information on:

Preconditions giving rise to states of emergency which destabilize the situation on the external borders of CIS member States;

External and internal political, military and economic action by non-CIS States on the external borders which has an impact on the security of other CIS States;

Impending (or completed) transfers across the borders and territory of CIS member States of arms, ammunition, explosives and radioactive, toxic or psychotropic substances, or other items and goods the import or export of which is prohibited by the domestic laws of CIS member States and by international agreements, and also the channels, methods, means and contrivances used by smugglers and illegal migrants on the border;

Persons involved in international drugs trafficking, terrorism and other forms of international crime who are likely to appear at external borders, and persons wanted by the police and intending to violate the external borders across the territory of other CIS States;

Organizations and groups whose activities across external borders are designed to stir up international conflicts.

Paragraph 2 (d)

Question:

Which practical steps have been taken in Kyrgyzstan in order to prevent the persons listed in this subparagraph from using Kyrgyz territory against other States or their citizens as required by the "*Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crimes and Other Threats to Stability and Security*"?

Response:

In order to prevent the possibility of Kyrgyzstan's territory being used against other States or their nationals, work is constantly under way to improve the structures responsible for protecting the State border and ensuring the security of the Republic. The establishment at the end of 2002 of a separate Border Service is one

of the actions aimed at ensuring that terrorists cannot cross Kyrgyzstan's border unimpeded and engage in any type of unlawful activity in its territory, including activity directed against other States and their nationals. Kyrgyzstan's armed forces in the southern regions of Kyrgyzstan have also been reinforced.

Within the framework of the Organization of the Treaty on Collective Security, a military component of the Collective Rapid Response Forces for the Central Asia Region has been deployed at the Kant military airbase in Kyrgyzstan. In August 1992, a Branch of the CIS Anti-Terrorist Centre for the Central Asia Region was established on the basis of the Operational Group of the CIS Anti-Terrorist Centre for the Central Asia Region. Within the framework of the Shanghai Cooperation Agreement, the issue of establishing a regional anti-terrorist structure of the Organization headquartered at Bishkek is in the final stages.

In addition, there is already positive experience of cooperation with the law enforcement agencies of member countries of the Shanghai Cooperation Organization and CIS. For example, in July 2002 the law enforcement agencies of Kyrgyzstan arrested and handed over, at the request of the Ministry of Public Security of China, Israil Rakhmutullah and Yakub Erkin, Chinese nationals and members of the Shark Azutlyk Turkestan extremist separatist organization, who had murdered in Bishkek the First Secretary (Consul) of the Chinese Embassy in Bishkek, Wang Jianping, and the businessman Nurmuhamed Umar.

Paragraph 2 (e)

Question:

Please provide the CTC with a progress report on the proposals to amend the Penal Code (page 14 of the report), particularly with regard to article 226 (page 17), to the extent that they are relevant for the implementation of this subparagraph.

Response:

These amendments have not yet been introduced into Kyrgyzstan's Criminal Code. However, in March 2003 a working group was established under the leadership of the First Deputy Prime Minister to draw up proposals for the introduction of amendments and additions to Kyrgyzstan's current criminal legislation relating to an increase in the penalties for participation in extremist organizations and terrorist activity.

Question:

According to the report, hostage takers or members of illegally armed organizations are not brought to justice if they surrender "voluntarily". How do the responsible Kyrgyz authorities interpret the term "voluntarily", given that the persons concerned know that they would be punished if they do not surrender?

Response:

Under the Kyrgyz Criminal Code (art. 29), voluntary abstention from a crime is recognized by a person's cessation of preparatory action for, or of action or inaction directly aimed, at the commission of a crime, provided that the person was aware of doing wrong and had a real possibility of carrying the crime through to its

completion. A person who voluntarily refrains from carrying a crime through to its completion is brought to justice only if the act he actually committed contains an element of another crime.

At present, however, there are no instances in the practice of Kyrgyz organs of justice of voluntary abstention from committing crimes in the category in question, and it is therefore not possible to analyse them and make a relevant assessment.

Question:

What is the competence of the courts of Kyrgyzstan to deal with criminal acts of each of the following kinds:

An act committed outside Kyrgyzstan by a person who is a citizen of, or habitually resident in, Kyrgyzstan (whether that person is currently present in Kyrgyzstan or not);

An act committed outside Kyrgyzstan by a foreign national who is currently in Kyrgyzstan?

Response:

In hearing criminal cases, the courts are guided by the provisions of Kyrgyzstan's criminal and criminal procedural legislation. Thus, pursuant to article 6 of the Criminal Code, a Kyrgyz national or a stateless person permanently resident in Kyrgyzstan who commits a crime outside Kyrgyzstan is liable under Kyrgyz criminal legislation if he has not been punished pursuant to a verdict of a foreign court.

Nationals of Kyrgyzstan who commit a crime in the territory of another State are not subject to extradition to that State.

Foreign nationals and stateless persons who commit a crime outside Kyrgyzstan and are in its territory may be extradited to the foreign State to be brought to criminal justice or serve a sentence in accordance with an international treaty.

Paragraph 2 (f)

Question:

What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings, including those relating to the financing or support of terrorist acts, must be met? How long does it actually take in practice to implement such a request in Pakistan?

Response:

Under the terms of the Agreement on legal assistance between organs of the prosecution service, an application for legal assistance is acted upon in not more than one month. The practice of providing legal assistance in criminal cases indicates that this period is fully sufficient for the execution of such assignments.

Paragraph 2 (g)

Question:

Please explain how the procedures for the issuance of identity papers and travel documents prevent the counterfeiting, forgery or fraudulent use of those documents and what other measures exist to prevent their forgery, etc.

Response:

Pursuant to Government Resolution No. 775 of 17 October 1994 on the approval of the regulations governing the passport system in Kyrgyzstan, the specimen passport and its description, Kyrgyz national passports are issued to citizens on the basis of the following documents:

A completed application form with the applicant's photograph and the seal of the housing management and housing and utilities office (section) or the local government authority;

A birth certificate;

The passport to be replaced, subsequently to be submitted to the internal affairs authorities of the place of residence.

The Ministry of Internal Affairs is currently studying the possibility of strengthening the protection of national passports.

The Ministry of Foreign Affairs of Kyrgyzstan has taken certain measures to introduce a numbered visa sticker in order to strengthen protection of the national visa. The visa stickers introduced make it possible to considerably strengthen protection of the national visa and solve the problem of illegal migration into Kyrgyzstan.

Visa stickers began to be used as of 1 May 2003 in the consular service department and the consular agency of the Ministry of Foreign Affairs of Kyrgyzstan at Manas international airport.

A first batch of 25,000 visa stickers, comprising 13 levels of protection, has so far been received. Instructions have been drawn up on the procedure for filling out, storing and accounting for visa stickers. In the first stage, visa stickers will be sent to diplomatic missions and consular establishments of Kyrgyzstan accredited to States where cases of forgery of Kyrgyz visas have been detected.

In view of the low level of security of national passports, the Government of Kyrgyzstan plans to establish an interdepartmental commission with the participation of representatives of the International Organization for Migration and the United States Embassy to consider the introduction of a new passport system and, specifically, the introduction of new international passports for travel outside Kyrgyzstan.

Question:

Could Kyrgyzstan please outline the provisions of the draft laws adopted subsequent to agreements entered into with France, Canada and the United States of America in the framework of the "Enduring Freedom" counter-terrorism operation to the extent they are relevant for the implementation of this subparagraph.

Response:

This paragraph was erroneously included in Kyrgyzstan's initial report.

Paragraph 3 (a) and (b)

Question:

Please list the countries which are outside the framework of "Enduring Freedom" and do not belong to CIS or the Shanghai Cooperation Organization with which Kyrgyzstan cooperates in order to prevent and suppress terrorist attacks and take action against perpetrators of such acts.

Response:

The Counter-Terrorism Act defines the appropriate procedure for cooperation. A request for legal assistance may be sent to the competent authorities of Kyrgyzstan.

In the response to paragraph 3 (c) there is a list of States with which Kyrgyzstan has entered into bilateral treaties on extradition and mutual legal assistance.

Paragraph 3 (c)

Question:

With which countries has Kyrgyzstan entered into bilateral treaties on extradition and mutual legal assistance?

Response:

Kyrgyzstan has signed and ratified treaties and agreements on the provision of mutual legal assistance and extradition with the following States:

- Treaty between the Kyrgyz Republic and the Republic of Kazakhstan on the provision of mutual legal assistance and legal relations in civil and criminal cases, of 26 August 1996 (act of ratification, 15 April 1997);
- Treaty between the Kyrgyz Republic and the Republic of Uzbekistan on legal assistance and legal relations in civil, family and criminal cases, of 24 December 1996 (act of ratification, 5 July 1997);
- Treaty between the Kyrgyz Republic and the Russian Federation on legal assistance and legal relations in civil, family and criminal cases, of 24 January 1994 (act of ratification, 25 January 1994);
- Treaty between the Kyrgyz Republic and the Russian Federation on the legal status of nationals of the Kyrgyz Republic who are permanently resident in the territory of the Russian Federation and of nationals of the Russian Federation who are permanently resident in the territory of the Kyrgyz Republic (act of ratification, 31 July 2000);
- Treaty between the Kyrgyz Republic and the Republic of Tajikistan on the provision of mutual legal assistance in civil, family and criminal cases, of 6 May 1998 (no information on ratification);

- Treaty between the Kyrgyz Republic and the Republic of Azerbaijan on legal assistance and legal relations in civil, family and criminal cases, of 5 August 1997 (act of ratification, 19 December 1997);
- Treaty between the Kyrgyz Republic and the Republic of Latvia on legal assistance and legal relations in civil, family and criminal cases, of 10 April 1997 (act of ratification, 19 February 1997);
- Treaty between the Kyrgyz Republic and the People's Republic of China on legal assistance in civil and criminal cases, of 4 June 1996 (act of ratification, 15 April 1997);
- Treaty between the Kyrgyz Republic and the Republic of India on the provision of legal assistance in criminal cases, of 13 April 1999 (reportedly not ratified);
- Treaty between the Government of the Kyrgyz Republic and the Government of Mongolia on legal assistance and legal relations in criminal cases, of 4 December 1999 (not ratified);
- Treaty between the Union of Soviet Socialist Republics and Czechoslovakia on legal assistance and relations in civil, family and criminal cases, of 12 August 1982 (in effect for the Kyrgyz Republic pursuant to a presidential decree of 21 July 1999);
- Agreement between the Government of the Kyrgyz Republic and the Government of the Federal Republic of Germany on cooperation in combating organized crime, terrorism and other highly dangerous crimes, of 2 February 1998 (no information on ratification);
- Agreement between the Government of the Kyrgyz Republic and the Government of the Czech Republic on cooperation in combating organized crime, illicit trafficking in drugs, psychotropic substances and precursors, terrorism and other dangerous types of crimes, of 8 April 1998 (entered into force 30 days after signature);
- Memorandum between the Kyrgyz Republic and the United Kingdom of Great Britain and Northern Ireland on cooperation in combating serious crimes, organized crime and illicit trafficking, of 26 January 2000 (entered into force on the date of signature);
- Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on cooperation in combating crime, of 9 July 1999 (act of ratification, 26 November 2000);
- Treaty between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan on joint action to combat terrorism, political and religious extremism, transnational organized crime and other threats to the stability and security of the parties, of 21 April 2000 (act of ratification, 26 November 2000);
- Treaty between the Kyrgyz Republic and the Republic of Kazakhstan on the extradition of criminals and criminal prosecution, of 8 April 1997 (act of ratification, 19 December 1997);

- Treaty between the Kyrgyz Republic and the Republic of Azerbaijan on the extradition of persons sentenced to imprisonment in order to serve further penalties, of 5 August 1997 (no information on ratification);
- Extradition treaty between the Kyrgyz Republic and the Republic of Azerbaijan, of 5 August 1997 (act of ratification, 24 July 1998);
- Extradition treaty between the Kyrgyz Republic and the People's Republic of China, of 27 April 1998 (not ratified).

Paragraph 3 (d)

Question:

The Counter-Terrorism Committee would welcome a progress report, in relation to the 12 relevant international conventions and protocols relating to terrorism, on:

- the steps taken in order to become a party to the instruments to which Kyrgyzstan is not yet a party; and
- progress made in enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

Response:

To date, Kyrgyzstan has acceded to the following international conventions and protocols relating to terrorism:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in Tokyo on 14 September 1963. Entered into force for Kyrgyzstan on 28 May 2000.
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on 16 December 1970. Entered into force for Kyrgyzstan on 26 March 2000.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September 1971. Entered into force for Kyrgyzstan on 26 March 2000.
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 24 February 1988. Entered into force for Kyrgyzstan on 29 March 2000.
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed in Montreal on 1 March 1991. Entered into force for Kyrgyzstan on 12 September 2000.
- International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on 15 December 1997. Entered into force for Kyrgyzstan on 30 May 2001.

In addition, on 15 April 2003, the President of the Kyrgyz Republic signed the following legislation:

- Act on accession to the International Convention against the Taking of Hostages;
- Act on accession to the International Convention for the Suppression of the Financing of Terrorism;
- Act on accession to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- Act on ratification of the United Nations Convention against Transnational Organized Crime and its protocols.

Kyrgyzstan's relevant ministries and departments are also studying the possibility of acceding to the remaining conventions: the Convention on the Physical Protection of Nuclear Material; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

Paragraph 3 (e)

Question:

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Kyrgyzstan is a party?

Response:

Under article 12 of the Constitution of Kyrgyzstan, international treaties and agreements which have taken effect in accordance with a procedure prescribed by law and to which Kyrgyzstan is a party, as well as the generally recognized principles and norms of international law, are an integral part of Kyrgyz legislation.

The relevant international treaties concerning extradition of criminals to which Kyrgyzstan is a party cover actions criminalized under the legislation of both Contracting Parties for which the penalty is deprivation of liberty for at least one year or another more serious penalty under the legislation of the Contracting Parties.

Anyone who commits a crime against public security (relating to terrorism) is liable under Kyrgyzstan's existing criminal legislation and in particular the following provisions of the Criminal Code: articles 226 (Terrorism), 227 (Taking of hostages), 228 (Intentional supplying of false information about a terrorist act), 229 (Organization of or participation in illegal armed groups), 230 (Banditry), 231 (Creation of a criminal association (criminal organization)), 232 (Hijacking of air or maritime transport or of railway rolling stock) and 233 (Mass disturbances).

Under article 6 of the Criminal Code, Kyrgyz nationals and stateless persons permanently resident in Kyrgyzstan bear criminal liability for crimes committed abroad only if they have not been convicted in the foreign State and if the act

committed is recognized as a crime both in Kyrgyzstan and in the State on the territory of which it was committed.

The extradition of persons sentenced in one State to serve the sentence in another State is also covered in bilateral and multilateral international treaties.

Paragraph 3 (f) and (g)

Question:

1. Please elaborate on how Kyrgyzstan verifies information provided by persons applying for refugee status. Is (or will) this verification procedure be based on one of the legal or regulatory provisions referred to on page 24 of the report? If so, please outline those provisions to the extent that they are relevant to the implementation of these subparagraphs.

2. Please inform the Counter-terrorism Committee when the law of the Kyrgyz Republic "On refugees" has entered into force.

Response:

1. The situation has changed somewhat since the earlier report (p. 24), because the Refugees Act has been in force since 29 March 2002.

Information provided by applicants for refugee status in Kyrgyzstan under the Provision on work with refugees, approved by Government Resolution No. 188 of 4 April 2003, is verified in the course of the application processing procedure. According to paragraph 2 (f) of this Provision, the procedure comprises:

An interview with the applicant;

Verification of the authenticity of the documents submitted and of the reliability of the information received;

Drafting of an opinion giving the results of consideration of the application;

Adoption of a decision to grant refugee status.

In addition to the interview results, the decision is based on information concerning the country of origin and materials received from Kyrgyzstan's diplomatic missions and from the Office of the United Nations High Commissioner for Refugees. Applicants are also checked against the database listing persons prohibited from entering the territory of CIS States and the database of the Unified Inter-departmental Information Network.

Moreover, under paragraph 8 of the above-mentioned Provision, if an application is submitted by a person who is present in Kyrgyzstan without the appropriate entry permit or identity document or with a counterfeit document, the immigration control organs receiving the application hold the applicant in a place of temporary detention at the point of entry across Kyrgyzstan's State border, in order to:

Establish the person's identity;

Clarify the circumstances in which an application is being made for refugee status;

Conduct a hearing, in the event that identity documents have been destroyed or counterfeit documents have been used;

Defend national security and protect public order.

At the same time, the immigration control organs inform the Migration Service Department in the Ministry of Foreign Affairs or its territorial offices that the applicant is being held in a place of temporary detention.

Applicants may not be held in temporary detention for more than 72 hours.

There is cooperation with other offices in identification issues and in checking of uncorroborated statements.

2. Kyrgyz legislation on refugees includes:

The 1951 United Nations Convention on the Status of Refugees and its 1967 Protocol;

The Refugees Act adopted on 25 March 2002, which came into force on 29 March 2002.

The Provision on work with refugees, approved by Government resolution No. 188 of 4 April 2003 (adopted under the Refugees Act).

Under article 1 of the Refugees Act, a refugee is defined as a person who is not a Kyrgyz national and who applies to Kyrgyzstan for recognition as a refugee after being forced to leave his place of permanent residence in the territory of another State owing to well-founded fear of being persecuted on grounds of race, religion, nationality, political beliefs or membership of a particular social group, or real fear of being persecuted in armed international conflicts and who is unable, owing to such fear, or unwilling to avail himself of the protection of his country.

Article 5 of the Refugees Act specifies that a person cannot be granted refugee status if he has committed a serious or especially serious crime of a non-political nature outside Kyrgyzstan and before he was admitted to Kyrgyzstan as a person seeking refugee status.

Because under Kyrgyz legislation terrorism and terrorist acts belong in the category of especially serious crimes, this provision may be considered grounds for denying refugee status to persons involved in terrorist activity.

Article 12 of the Refugees Act states that a refugee cannot be returned against his will to the country which he left for the reasons mentioned in the first part of article 1 of the Act.

However, this does not apply to a refugee who is considered for valid reasons to be a threat to security or has been sentenced by a valid court order for commission of an especially serious offence.

This rule can be used to prevent abuse of refugee status.

In Kyrgyzstan, there are no instances of refugee status being granted to persons involved in terrorism or terrorist acts.

Paragraph 4

Question:

Has Kyrgyzstan addressed any of the concerns expressed in paragraph 4 of the resolution?

Response:

See response to paragraph 3 (d).

Aware of the close connection between international terrorism and transnational organized crime, illegal drugs, money-laundering, illegal arms-trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials, Kyrgyzstan is endeavouring to contribute to the strengthening of international regimes for the non-proliferation of weapons of mass destruction. Pursuit of a non-proliferation policy is one of the pillars of Kyrgyz foreign policy.

Mention may be made of the following recent events:

On 24 April 2003, the Minister of Foreign Affairs submitted for the consideration of the deputies in the Legislative Assembly of the Parliament draft legislation on ratification of the Comprehensive Nuclear-Test-Ban Treaty. Following the Assembly meeting, the legislation was approved and the Legislative Assembly adopted a resolution embodying an Act on ratification of the Treaty. Kyrgyzstan has thus practically completed arrangements for the ratification of this important Treaty, which is the cornerstone of non-proliferation.

Kyrgyzstan's application for membership in the International Atomic Energy Agency (IAEA) was considered and approved at last year's IAEA General Conference. Under article 4 of the Agency's Statute, ratification of the Statute is a prerequisite for full IAEA membership. At the initiative of the Ministry of Foreign Affairs, by resolution No. 262 of 2 May 2003, the Government submitted to Parliament draft legislation on ratification of the IAEA Statute.

On 29 April 2003, the President signed Act No. 89 on ratification of the Convention on the Prohibition of the Development, Production and Stockpiling of Chemical Weapons and on Their Destruction.

In addition, Kyrgyzstan is studying the possibility of acceding to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

Kyrgyzstan remains committed to the creation of a nuclear-weapon-free zone in Central Asia and attaches special significance to the unanimous adoption at the fifty-seventh session of the United Nations General Assembly of a resolution calling on all States to support this initiative and to assist in the creation of the zone. We are convinced that the creation of a nuclear-weapon-free zone in our region, based on trust between our States, will strengthen peace and security at the regional and global levels.

The process of creating the zone is now in the concluding phase and agreement is being reached on certain outstanding details.

Kyrgyzstan's participation in the non-proliferation process would not have been so effective without the support of friendly countries, the United Nations, IAEA and other international organizations.

Other matters

Question:

Could Kyrgyzstan please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

Response:

Kyrgyzstan's organs of State authority are cooperating in the implementation of resolution 1373 under articles 5 and 6 of the Act on combating terrorism.

In addition, monitoring of financial activity in order to promote implementation of the resolution is the responsibility of several departments: the National Security Service, the Ministry of Internal Affairs, the Department of Tax Inspection of the Revenue Committee in the Ministry of Finance, and the National Bank.

The organizational chart of one of the departments — the National Bank of Kyrgyzstan — is given below.

The basic tasks and functions of the National Bank of Kyrgyzstan are determined by its mission goals. Functions and responsibilities are divided between the National Bank's structural units, which together make up its organizational structure.

The National Bank's organizational structure reflects two underlying principles:

- The principle of relevance of functional structure;
- The principle of ongoing development and improvement.

The relevance principle means that the workload of all individual structural units and links must be directly related to a particular function of the National Bank and must promote the attainment of its goals.

The principle of ongoing development and improvement means that the existing structure of the National Bank is not static: it changes and will change to reflect changes in basic tasks, development priorities, economic transformations and reforms taking place in the State.

In view of current economic conditions and requirements, the National Bank has the following organizational structure:

- The Economic Department;
- The Money and Credit Transactions Department;
- The Currency Department;
- The Cash Balance Department;

- The Banking Supervision Department;
- The Oversight and Licensing Methodology Department;
- The Accounting and Reporting Department;
- The Payment Systems Department;
- The Information Systems Department.

It should be noted that the National Bank is organized to perform simultaneously in three capacities: as a State bank, as a banks' bank and as a simple enterprise in the territory of Kyrgyzstan. In addition to its functional units, the Bank has units working directly to ensure that the Bank operates without interruption and efficiently as a whole, as a body corporate in the territory of Kyrgyzstan. These structural units include:

- The External and Public Relations Division;
- The Internal Audit Division;
- The Division of Supervision of Non-banking Institutions;
- The Economic Research Unit;
- The Personnel Division;
- The Legal Division;
- The Finance Division;
- The Data Protection Division;
- The Security Division.

An organizational chart of the National Bank is attached.

Question:

The Counter-Terrorism Committee would be grateful to receive a copy of the Act "on combating (counteracting) terrorism" referred to on pages 12 and 15 of the report and, if it is a different law, Act No. 116 of the Kyrgyz Republic of 21 October 1999 "on the fight against terrorism".

Response:

The Counter-Terrorism Act, No. 116 of 21 October 1999, is submitted as an attachment to the present supplementary report. This Act lays down the organizational and legal bases for combating terrorism and the arrangements for coordinating the activities of the bodies engaged in doing so.